

United States
Circuit Court of Appeals
For the Ninth Circuit.

JOHN GILL, for Whom has Been Substituted MAURICE Mc-
MICKEN, Administrator With the Will Annexed of JOHN
GILL, Deceased,

Plaintiff in Error,

vs.

FRANK WATERHOUSE,

Defendant in Error,

Transcript of Record.

Upon Writ of Error to the United States District Court of the
Western District of Washington, Northern Division.

Filed

JAN 16 1917

F. D. Monckton,
Clerk.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Names and Addresses of Counsel.

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ington.

Messrs. PRESTON & THORGRIMSON, Attorneys
for Defendant in Error,
605 Lowman Building, Seattle, Washington.

Messrs. BOGLE, GRAVES, MERRITT & BOGLE,
Attorneys for Defendant in Error,
609-616 Central Building, Seattle, Wash-
ington. [1*]

*In the Circuit Court of the United States for the
Western District of Washington, Northern
Division.*

No. 1633.

JOHN GILL,

Plaintiff,

vs.

FRANK WATERHOUSE,

Defendant.

Amended Complaint.

The plaintiff by way of amended complaint for
cause of action alleges:

I.

Duing all the times hereinafter mentioned the said
plaintiff, John Gill, was and now is a citizen and sub-

*Page-number appearing at foot of page of original certified Transcript
of Record.

ject of Great Britain residing at Edinburgh, Scotland.

II.

That during all the times hereinafter mentioned the said defendant, Frank Waterhouse, was and now is a citizen of the United States of America and the State of Washington residing at Seattle in the County of King in the said State of Washington.

III.

That during all the times hereinafter mentioned The Commercial Bank of Scotland, Limited, was and now is a corporation duly organized and existing under and by virtue of the laws of Great Britain, having its principal place of business at Edinburgh, Scotland, and during all of said times was, and now is, a citizen and subject of Great Britain.

IV.

During all the times hereinafter mentioned, Frank Waterhouse, Limited, was and now is a corporation duly organized and existing under and by virtue of the laws of Great [2] Britain and having its principal place of business at London, England.

V.

On the 16th day of February, 1899, at London, England, the said Frank Waterhouse, Limited, and the said Frank Waterhouse were desirous of obtaining from the said The Commercial Bank of Scotland, Limited, certain further advances to be made to the said Frank Waterhouse, Limited; and thereupon said The Commercial Bank of Scotland, Limited, agreed to make such further advances to the said Frank Waterhouse, Limited, upon being guar-

anted by the said defendant the payment by the said Frank Waterhouse, Limited, of advances theretofore made to the said Frank Waterhouse, Limited, and thereafter to be made to the said Frank Waterhouse, Limited, up to a sum not to exceed twenty-one thousand pounds sterling (£21,000); and thereupon and in consideration thereof the said Frank Waterhouse did then and there make, execute and deliver to the said The Commercial Bank of Scotland, Limited, his certain Letter of Guarantee in the words and figures following, to wit:

“To THE COMMERCIAL BANK OF SCOTLAND, LIMITED.

I, Frank Waterhouse, Tacoma, Washington, United States, America, hereby guarantee you payment of all sums for which Frank Waterhouse, Limited, of one hundred and forty-seven Cannon Street, London, whether on an account or accounts kept in their name in your books and operated on for them by cheques or drafts signed by two of their directors and their secretary, all for the time, or on bills, promissory notes or other obligations, are or may be liable to you, but the amount for which I shall be liable under this Guarantee shall not exceed twenty-one thousand pounds sterling with interest from the date or dates [3] at which the said Frank Waterhouse, Limited, have become or shall become indebted to you; and I declare (1) that you shall be entitled to require from me whenever you think fit, a payment or payments to account of my liability; (2) that you may grant to the said Frank Waterhouse, Limited, or to the obligants in any

bills of exchange or promissory notes, or other writings received by you from them, or in which they may be liable to you, time or other indulgence, and compound with them or such obligants, and may give up any securities which you now have or may hereafter have belonging to the said Frank Waterhouse, Limited, or to others, all without consulting me, and without affecting my obligation to you; (3) that I shall not be entitled to rank on the estate of the said Frank Waterhouse, Limited, in respect to any payment or payments to account as aforesaid, nor to have the benefit of any securities such as aforesaid until your whole claims against them are satisfied; and (4) that this guarantee is a continuing obligation and can be recalled by me only by writing and shall remain in force notwithstanding my death until recalled in writing, and shall apply to all sums for which the said Frank Waterhouse, Limited, shall become indebted to you prior to such recall.

IN WITNESS WHEREOF, These presents are subscribed by me at London on the sixteenth day of February eighteen hundred ninety-nine before these witnesses: Andrew Whitley, Manager, and William Bamford Lang, Accountant, both of your branch there.

(Signed) FRANK WATERHOUSE.

(Signed) AND. WHITLEY,

Witness,

(Signed) W. B. LANG,

Witness." [4]

VI.

That between the 18th day of March, 1898, and the 31st day of October, 1903, the said The Commercial Bank of Scotland, Limited, at the special instance and request of the said Frank Waterhouse, Limited, and this defendant, advanced the said Frank Waterhouse, Limited, on accounts kept in the name of the said Frank Waterhouse, Limited, on the books of said The Commercial Bank of Scotland, Limited, and operated on and for the said Frank Waterhouse, Limited, by checks and drafts and on bills, promissory notes and other obligations, together with interest thereon, the sum of £103217/11/11, no part of which has been paid, except the sum of £80319/15/6, so that there was thereupon due on account thereof the said The Commercial Bank of Scotland, Limited, the sum of £22897/16/5, or \$109,909.54, together with interest thereon at legal rate from the 15th day of September, 1907, no part of which has been paid; that a copy of said accounts as aforesaid is hereto attached, said accounts being marked, respectively, "General Account," "Loan Account," and "No. 2 Account," which said accounts are hereby expressly referred to and made a part of this complaint.

VII.

From time to time between the date of the inception of said accounts and the 31st day of October, 1906, the said The Commercial Bank of Scotland, Limited, at the special instance and request of the said Frank Waterhouse, Limited, and at the special instance and request of this defendant, did grant to

the said Frank Waterhouse, Limited, and to the said defendant time and indulgence upon the indebtedness and the various items thereof as more specifically set forth in each of said accounts, until the said 31st day of October, 1906; that [5] on said 31st day of October, 1906, the said Frank Waterhouse, Limited, had after demand wholly failed to pay the sum then due on account of said advances or any part thereof. Thereupon and on said 31st day of October, 1906, the said The Commercial Bank of Scotland, Limited, did make demand upon this defendant that he make immediate payment of said amount so due on account of said advances to said Frank Waterhouse, Limited, the sum being the amounts set forth in the respective accounts attached hereto, together with interest thereon upto said 31st day of October, 1906.

VIII.

That the said Frank Waterhouse, Limited, and the said defendant have refused and still refuse to pay the said amounts so due as aforesaid or any part thereof, though the same is now past due and payable.

IV.

That from time to time and at quarterly periods between the 7th day of May, 1898, and the 31st day of October, 1903, interest became due upon the amounts advanced as shown by said account attached hereto named the "Loan Account," and at said periods as the same became due, interest thereon was charged to the account of said Frank Waterhouse, Limited, and upon the books of account of

the said The Commercial Bank of Scotland, Limited, as is in each instance shown by the accounts attached hereto, marked "General Account" and "No. 2 Account"; and as said charges of interest were made in said accounts as hereinbefore set forth, statements of said account were from time to time and up to and including said 31st day of October, 1903, rendered the said Frank Waterhouse, Limited, and this defendant, and said accounts rendered as aforesaid were at said time received and assented to by the said Frank [6] Waterhouse, Limited, and this defendant.

X.

That prior to the commencement of this action, the said The Commercial Bank of Scotland, Limited, did for certain good and onerous causes and considerations assign to this plaintiff said letter of guarantee hereinbefore set forth, together with its demand against said defendant and the said plaintiff is now the owner and holder thereof.

XI.

That the value of the amount and matter in dispute in this controversy exceeds exclusive of interest and costs the sum of two thousand (2000) dollars.

WHEREFORE, Plaintiff prays judgment against the said defendant for the sum of £21,000 sterling, or to wit, the sum of \$101,640, together with his costs and disbursements herein.

HUGHES, McMICKEN, DOVELL & RAMSEY,

Attorneys for Plaintiff.

United States of America,
District of Washington,—ss.

W. T. Dovell, being first duly sworn, deposes and says: I am one of the attorneys for the plaintiff herein; the said plaintiff is absent from and is a nonresident of King County and the State of Washington, for which reason I make this verification on his behalf; I know the contents of the foregoing amended Complaint, and believe the same to be true.

W. T. DOVELL.

Subscribed and sworn to before me this 13th day of March, A. D. 1909.

[Seal]

E. C. HANFORD,

Notary Public in and for the State of Washington,
Residing at Seattle.

Exhibit omitted in accordance with Stipulation as to printing of record.

[Indorsed]: Amended Complaint. Filed U. S. Circuit Court, Western District of Washington. Mar. 15, 1909. A. Reeves Ayres, Clerk. W. D. Covington, Deputy. [7]

*In the Circuit Court of the United States for the
Western District of Washington, Northern
Division.*

No. 1633.

JOHN GILL,

Plaintiff,

vs.

FRANK WATERHOUSE,

Defendant.

Answer.

The defendant, Frank Waterhouse, answering the amended complaint, filed by the plaintiff, John Gill, herein, states:

I.

He denies that he has any knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs numbered I and III of said amended complaint.

II.

He denies each and every allegation contained in paragraph numbered II of said amended complaint, except he admits that at the time of the commencement of this action he was and now is residing in Seattle, in the county of King, in the State of Washington.

III.

He admits that on or about the 16th day of February, 1899, he executed the Letter of Guaranty set forth in paragraph numbered V of said amended complaint. He denies each and every other allegation in said paragraph contained.

IV.

Answering paragraph numbered VI of said amended complaint [8] he denies that between March 18, 1898, and October 31, 1903, or at any other time, The Commercial Bank of Scotland, Limited, advanced to Frank Waterhouse, Limited, the sum of 103,217/11/11, or any other sum, at the instance or request of this defendant. He denies that he has any knowledge or information sufficient to form a

belief as to any of the other matters and things alleged in paragraph numbered VI of said amended complaint.

V.

Answering paragraph numbered VII of said amended complaint, he denies that The Commercial Bank of Scotland, Limited, granted to the said Frank Waterhouse, Limited, or to this defendant, time or indulgence upon the alleged indebtedness mentioned in said paragraph, at the instance and request of this defendant. He denies that he has any knowledge or information sufficient to form a belief as to whether said The Commercial Bank of Scotland, Limited, at the instance and request of said Frank Waterhouse, Limited, or at all, granted time and indulgence to the said Frank Waterhouse, Limited, until the 31st day of October, 1906, or until any time or at all. He denies any knowledge or information sufficient to form a belief as to whether said Frank Waterhouse, Limited, had, on said 31st day of October, 1906, wholly failed or failed at all to pay the sum then due on account of any advances made to it, or any part thereof. He denies each and every other allegation contained in said paragraph numbered VII.

VI.

Answering paragraph numbered VIII of said amended complaint, he denies any knowledge or information sufficient to form a belief whether said Frank Waterhouse, Limited, has refused or still refuses to pay the amounts alleged to be due from it, or any part thereof. He admits that he has refused

and still [9] refuses to pay the amount, or any part of the amount alleged in said complaint to be due from said Frank Waterhouse, Limited, to said The Commercial Bank of Scotland, Limited, and he admits that he has refused and still refuses to pay any sum whatever to the plaintiff herein. He denies each and every other allegation contained in paragraph VIII.

VII.

Answering paragraph numbered IX of said amended complaint, he denies that any statements of account in substance as therein alleged were from time to time and up to October 31st, 1903, or at any time, or at all, rendered to this defendant or received by him. He denies that he ever assented to any statement of account rendered by The Commercial Bank of Scotland, Limited, to him. He denies that he has any knowledge or information sufficient to form a belief as to any of the other matters or things alleged in said paragraph numbered IX.

VIII.

He denies that he has any knowledge or information sufficient to form a belief as to any of the matters or things alleged in paragraph numbered X of said amended complaint.

And for a first, separate and affirmative defense, defendant states:

I.

That on and prior to the alleged assignment of said Letter of Guaranty by The Commercial Bank of Scotland, Limited, to said plaintiff, the amount owing by said Frank Waterhouse, Limited, to said

The Commercial Bank of Scotland, Limited, being the money demanded in said amended complaint, was paid to said The Commercial Bank of Scotland, Limited. [10]

II.

For a second, separate and affirmative defense defendant states:

That the cause of action stated in the amended complaint of the plaintiff herein is barred by the Statute of Limitations of the State of Washington.

III.

And for a third, separate and affirmative defense defendant says:

That the cause of action set forth in said amended complaint did not accrue within three years before the commencement of this action.

IV.

And for a fourth, separate and affirmative defense defendant says:

That the cause of action set forth in said amended complaint did not accrue within six years before the commencement of this action.

V.

And for a fifth, separate and affirmative defense defendant says.

That the indebtedness alleged to be owing by said Frank Waterhouse, Limited, to said plaintiff by virtue of the assignment from said The Commercial Bank of Scotland, Limited, is upon open account; that the right of action of said plaintiff and of his assignor against said Frank Waterhouse, Limited, to recover said alleged indebtedness, and each and

every item thereof, accrued more than three years before the commencement of this action, and that said Frank Waterhouse, Limited, prior to the commencement of this action, had been, and were discharged and released from any liability therefor or thereupon by the bar of the [11] Statute of Limitations, and were not then and are not now liable for the same, or any part thereof.

VI.

And for a sixth, separate and affirmative defense, defendant states:

That at the time of the execution and delivery of said Letter of Guaranty set forth in paragraph numbered V of said amended complaint, other Letters of Guaranty of like import and of the same tenor and substance were executed and delivered to said The Commercial Bank of Scotland, Limited, by other parties, that is to say, by Alexander McNab, I. McNab, J. M. Mitchell, R. Bruck Archibald and Marshall McEwen & Co.; that each of said Letters of Guaranty were executed by said above-named persons contemporaneously with the execution of said Letter of Guaranty by this defendant, and were based upon the same consideration and were each delivered to said The Commercial Bank of Scotland, Limited, simultaneously with the delivery of the Letter of Guaranty of this defendant, and that the execution and delivery of said Letters of Guaranty by the above-named parties, and by this defendant, were parts of one and the same transaction, and to secure the same indebtedness alleged in said amended complaint, and were accepted by said The Commercial Bank of Scotland, Limited, at one and the same time

as such security; that subsequent thereto, and without the knowledge or consent of this defendant, said The Commercial Bank of Scotland, Limited, discharged and released each and all of the parties hereinabove named from any liability under their said separate Letters of Guaranty or otherwise for the debt demanded in said amended complaint.

WHEREFORE, The defendant prays that said complaint be dismissed, and that he may recover from the plaintiff his costs and reasonable disbursements herein. [12]

BOGLE & SPOONER and
HAROLD PRESTON,
Attorneys for Defendant.

United States of America,
District of Washington,—ss.

Frank Waterhouse, being first duly sworn, on oath says, that he is the defendant named in the above-entitled action, that he has read the foregoing answer, knows the contents thereof and believes the same to be true.

FRANK WATERHOUSE.

Subscribed and sworn to before me this 3d day of March, A. D. 1910.

[Seal]

F. T. MERRITT,
Notary Public in and for the State of Washington,
Residing at Seattle.

We hereby acknowledge service of the within Answer and the receipt of a true copy thereof, this 4th day of March, 1910.

HUGHES, McMICKEN, DOVELL & RAMSEY,

Attorneys for Plaintiff.

[Indorsed]: Answer. Filed U. S. Circuit Court, Western District of Washington. Mar. 10, 1910. A. Reeves Ayres, Clerk. By W. D. Covington, Deputy. [13]

*In the Circuit Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 1633.

JOHN GILL,

Plaintiff,

vs.

FRANK WATERHOUSE,

Defendant.

Reply.

Comes now the plaintiff and replies to the affirmative matter set out in the answer herein as follows:

I.

For reply to the first separate and affirmative defense, this plaintiff denies the same and each and every allegation therein contained.

II.

For reply to the second separate and affirmative defense, this plaintiff denies the same and each and every allegation therein contained.

III.

For reply to the third separate and affirmative defense, this plaintiff denies the same and each and every allegation therein contained.

IV.

For reply to the fourth separate and affirmative

defense, this plaintiff denies the same and each and every allegation therein contained. [14]

V.

For reply to the fifth separate and affirmative defense, this plaintiff admits that the indebtedness owing by said Frank Waterhouse, Limited, to said plaintiff is, by virtue of the assignment from the said The Commercial Bank of Scotland, Limited, upon open account, but denies each and every other allegation therein contained.

VI.

For reply to the sixth separate and affirmative defense, this plaintiff denies the same and each and every allegation therein contained.

WHEREFORE, this plaintiff repeats the prayer of his complaint.

HUGHES, McMICKEN, DOVELL & RAMSEY,

Attorneys for Plaintiff.

United States of America,
District of Washington,—ss.

W. T. Dovell, being first duly sworn, deposes and says:

I am one of the attorneys for the plaintiff herein; the said plaintiff is absent from and is a nonresident of King County and the State of Washington, for which reason I make this verification on his behalf; I know the contents of the foregoing reply, and believe the same to be true.

W. T. DOVELL.

Subscribed and sworn to before me this — day
of September, A. D. 1910.

[Seal] FRANK P. HELSELL,
Notary Public in and for the State of Washington,
Residing at Seattle.

Copy of within Reply received and due service of
same acknowledged this first day of September, 1910.

BOGLE & SPOONER,
Attys. for Defendant. [15]

[Indorsed]: Reply. Filed U. S. Circuit Court,
Western District of Washington. Sep. 1, 1910. A.
Reeves Ayres, Clerk. W. D. Covington, Deputy.
[16]

*In the Circuit Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 1633.

JOHN GILL,

Plaintiff,

vs.

FRANK WATERHOUSE,

Defendant.

Order for Substitution of Administrator as Plaintiff.

Came on to be heard the petition of Maurice Mc-
Micken to be substituted as plaintiff in the above-
entitled cause, and it appearing to the Court that
the said John Gill died in the county of Ayr, Scot-
land, on the first day of December, 1910, being then
and there a resident of said county of Ayr, Scot-
land, and domiciled therein, and leaving a last will

and testament, and that said last will and testament has been admitted to probate in the Superior Court of King County, State of Washington, and the said petitioner, Maurice McMicken, has been appointed administrator with the will annexed of said estate of John Gill, deceased, and that the said Maurice McMicken has thereunto qualified by taking the oath and giving the bond required by the laws of the State of Washington, and is now the duly qualified and acting administrator with the will annexed of the said John Gill, deceased;

It is now, therefore, ORDERED that the said Maurice McMicken, administrator of the estate of John Gill, deceased, be and he is hereby substituted as the party plaintiff in said cause, and that said action be continued in his name as [17] plaintiff.

Done in open court this 25th day of September, A. D. 1911.

C. H. HANFORD,
Judge.

[Indorsed]: Order for Substitution of Administrator as Plaintiff. Filed U. S. Circuit Court, Western District of Washington. Sept. 25, 1911. Sam'l D. Bridges, Clerk. B. O. Wright, Deputy.
[18]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 1633.

JOHN GILL, for Whom has been Substituted
MAURICE McMICKEN, Administrator
With the Will Annexed of JOHN GILL, De-
ceased,

Plaintiff,

vs.

FRANK WATERHOUSE,

Defendant.

Order of Dismissal.

The above-entitled cause came on regularly for trial before the Court and a jury duly impaneled, on the 30th day of June, 1916, the plaintiff appearing by his attorneys, Messrs. Hughes, McMicken, Dovell & Ramsey, and the defendant appearing in person and by his attorneys, Harold Preston, Esquire, and Messrs. Bogle, Graves, Merritt & Bogle, and the trial having continued from day to day, and the plaintiff having submitted to the Court and jury all of his evidence in such cause and having rested his case, and the defendant having thereupon moved the Court for a dismissal of said action, upon the grounds and for the reasons that the Court has no jurisdiction thereof, and that the evidence introduced by the plaintiff before the jury is not sufficient to warrant a verdict in favor of the plaintiff, and the Court, after due consideration, being of the opinion that the evidence submitted to the jury is

not sufficient to [19] justify a verdict in favor of plaintiff and against the defendant herein;

IT IS NOW ORDERED, ADJUDGED and DECREED that said cause be, and it is, hereby dismissed, and that the defendant recover from the plaintiff his costs and reasonable disbursements herein to be taxed by the clerk.

Plaintiff excepts to the ruling of the Court and the exception is allowed.

ORDERED and ADJUDGED in open court this 6th day of July, 1916.

JEREMIAH NETERER,
Judge.

O. K. as to form.

HUGHES, McMICKEN, DOVELL & RAMSEY,

Attorneys for Plaintiff.

[Indorsed]: Order of Dismissal. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. July 12, 1916. Frank L. Crosby, Clerk. By E. M. L., Deputy. [20]

[Title of Court and Cause.]

Bill of Exceptions.

LODGED SEPTEMBER 30, 1916. [21]

BE IT REMEMBERED, that heretofore and on, to wit, the 30th day of June, 1916, the above-entitled cause came regularly on for trial in the above-named court before the Honorable Jeremiah Neterer, Judge of said court, sitting with a jury, plaintiff appearing by Messrs. E. C. Hughes and Otto B. Rupp, of

Hughes, McMicken, Dovell & Ramsey, his attorneys and counsel, and defendant appearing by William H. Bogle, Esq., of Bogle, Graves, Merritt & Bogle, and Harold Preston, Esq., his attorneys and counsel; and a jury having been duly impaneled and sworn to try said cause, whereupon the following proceedings were had and done, to wit:

(In this bill of exceptions the interrogatories and cross-interrogatories propounded to the witnesses are separately attached to this bill of exceptions, following the testimony and preceding the exhibits, and the answers of the witnesses only are given, reference being made to the [22] numbers of interrogatories and cross-interrogatories.)

Plaintiff offered and read in evidence the deposition of James Gill, taken before Alexander Guild, Commissioner, at Edinburgh, Scotland, as follows:

Deposition of James Gill, for Plaintiff.

(Answering Interrogatory No. 1:) "I am 28 years of age and reside at 7 Hartington Place, Edinburgh. I am a solicitor in Edinburgh, a partner of the firm of Messrs. Maxwell, Gill & Pringle, W. S., 26 Rutland Street, Edinburgh."

(Answering Interrogatories Nos. 2 and 3:) "I am an enrolled law agent in Scotland under the Law Agents Act 1873, and as such am entitled to practice as a law agent in any court of law in Scotland, and do so practice, and am familiar with the laws of Scotland."

(Answering Interrogatory No. 4:) "I knew the late John Gill during his lifetime. I was his grand-nephew, and was one of his assistants in his business

(Deposition of James Gill.)

until he died, and under his settlement he appointed me one of his executors.”

(Answering Interrogatories Nos. 5, 6 and 7:)
“The said John Gill carried on business as a solicitor in Edinburgh under the firm name of Gill & Pringle, W. S. His office address was 128 George Street, Edinburgh. He resided when in Edinburgh at Beechwood Mains, Murrayfield, Edinburgh, and had also two residences at the coast where he resided during the summer months. Between December, 1907, and the date of his death he was at one or the other of the above places. Said John Gill was a citizen of and was domiciled in Scotland. He died on December 1, 1910.”

(Answering Interrogatory No. 8:) “I have in my possession an assignation by the Commercial Bank of Scotland, Ltd., [23] incorporated by Royal Charter and Act of Parliament, in favor of the said John Gill and his heirs, executors and assignees, dated 8th October, 1907. The said assignation is signed by N. B. Gunn and Thomas W. Tod, as two of the Directors, and by Alex. Bogie as the manager of the said Commercial Bank of Scotland Ltd. The said assignation assigned to said John Gill the letter of guarantee granted by Frank Waterhouse, therein designated ‘sometime Merchant, Tacoma, Washington, United States of America, now shipping agent, Seattle, United States of America,’ dated 16th February, 1899, whereby the said Frank Waterhouse guaranteed payment of all sums for which Frank Waterhouse, Ltd., should be liable to

(Deposition of James Gill.)

the bank, but the amount for which he should be liable under said guarantee should not exceed £21,000 sterling with interest. On 15th February, 1907, the liability of Frank Waterhouse, Ltd., to the said bank was £22,897:16:5. This debt was paid to the said bank by the said John Gill and [the said bank also by said assignation assigned to the said John Gill and his heirs, executors or assignees, their claim to said sums with interest thereon against the said Frank Waterhouse, but to the extent of £21,000 sterling only of principal with interest on said sum of £21,000 from 31st October, 1903.]”

The words in brackets were stricken out on the objection of defendant that the witness was testifying simply to the contents of a written instrument; to which ruling of the Court plaintiff excepted and his exception was allowed. [24]

The reading of the deposition thereupon proceeded as follows:

(Answering Interrogatories Nos. 9 and 10:) “I have the said assignation in my possession and have attached same to my deposition. I have marked it Exhibit ‘B’ and have signed a docquet thereon. The said assignation is properly executed on behalf of the said Commercial Bank of Scotland, Ltd., under the law of Scotland. [It conveys to the said John Gill, his heirs, executors or assignees, what by its terms it purports to convey and is in all respects valid and effectual according to the laws of Scotland.]”

The portion in brackets was received in evidence

(Deposition of James Gill.)

over defendant's objection that it is the conclusion of the witness, not evidence of a fact, and is a conclusion of law which must be made by the Court, not the witness.

(Answering Interrogatory No. 11:) "The Bankers Books Evidence Act 1879, 42 Vict. Chap. 11, states in detail the law of Great Britain, including Scotland, relative to the admission in evidence of copies of entries from Bankers' Books. A copy of said Act of Parliament is attached to my deposition and I refer to the Act for its terms. I have marked it Exhibit 'A' and have signed a docquet thereon."

A certified copy of said Bankers Book Evidence Act was thereupon offered in evidence by plaintiff, but upon objection of defendant was excluded, and an exception allowed to plaintiff. A copy whereof is attached hereto as Exhibit "H" and made a part hereof. [25]

The reading of the deposition thereupon proceeded as follows:

(Answering Interrogatory No. 12:) "The late Mr. Gill died on 1st December, 1910. By his holograph settlement he appointed Mr. James Wood Fergusson, 5 Hatton Place, Edinburgh; the Rev. Robert Sinclair, Roslin, Newlands, Glasgow, and myself, and the survivors and survivor of them and me, to be his executors. Mr. James Wood Fergusson predeceased the said John Gill, and the Rev. Robert Sinclair and I accepted office as executors aforesaid, completed the title to his estate and entered upon the possession and management of his

(Deposition of James Gill.)

estate. In terms of said appointment the assignation by the Commercial Bank of Scotland, Ltd., in favor of the said John Gill and his heirs, executors or assignees, was carried to the said Rev. Robert Sinclair and myself as the surviving executors of the said John Gill."

Cross-examination.

(Answering Cross-Interrogatory No. 1:) "The late John Gill was a solicitor in Edinburgh, and a customer of the Commercial Bank of Scotland, Ltd. This was the only connection he had with said bank. I believe he first opened an account with said bank on 9th August, 1882, and it subsisted until the date of his death with the exception of a period between July, 1891, and October, 1905, when, so far as I can discover, he did no business with said bank."

(Answering Cross-Interrogatory No. 2:) "The principal assignation came into my possession recently. The late John Gill sent it to Messrs. Hughes, McMicken, Dovell & Ramsey, of Seattle, U. S. A., some years ago for the purposes of this action and it was returned by them for the purpose of being [26] deponed to in connection with this action."

(Answering Cross-Interrogatory No. 3.) "The late Mr. Gill at the time of his death did not hold or have in his possession an assignment or transfer to him or to any other person of the letter or letters of guarantee by Alexander McNab, John McNab, R. B. Archibald, Marshall McEwen & Co., or John M. Mitchell. The letters of guarantee by these parties were in his possession but they had not been assigned

(Deposition of James Gill.)

or transferred to him. The late John Gill had no other document, writing, assignation, transfer or conveyance relating to the indebtedness of Frank Waterhouse, Ltd.”

(Answering Cross-Interrogatory No. 4:) “I am, as already explained, one of the executors of the late John Gill, and as such I am entitled to the possession of all documents belonging to him. The assignation by the Commercial Bank of Scotland, Ltd., in favor of the late John Gill, referred to in direct interrogatory No. 8, was sent by him to Messrs. Hughes, Mc-Micken, Dovell & Ramsey, some time before his death in connection with the proceedings raised by him against Frank Waterhouse. They returned the assignation last year in order that I might produce it before the Commissioner. I have no direct personal knowledge of the initiation of the transaction between the late John Gill and the Commercial Bank of Scotland, Ltd., but my understanding is that the bank were desirous that the debt due by Frank Waterhouse, Ltd., should be repaid and that Mr. Alexander McNab, who was one of the guarantors and who was not, I understand, in a position to meet the guarantee if it were enforced against him, approached the late John Gill as a friend and asked him to take over the debt; that the late John Gill agreed to do so, and paid off the debt, which amounted to £22,897:16:5, and [27] obtained the assignation before mentioned by the Commercial Bank of Scotland, Ltd., in favor of himself as an individual, in consideration of said payment by him to the bank, and that the payment was made by

(Deposition of James Gill.)

cheque or cheques by the late John Gill. I have not been able to find the cheque or cheques among the late John Gill's papers."

(Answering Cross-Interrogatory No. 5:) "So far as I have discovered there were not any outstanding accounts, bills or notes between the late John Gill and Alexander McNab relating to the business of Frank Waterhouse, Ltd., with the Commercial Bank or to the letter of guarantee of Frank Waterhouse. I have found among the trust papers certain documents relating to the assignation by the bank and to the present suit, but these did not contain any record of any transaction with Mr. McNab in relation thereto. A copy was kept of the late Mr. Gill's correspondence in connection with the assignation of the guarantee in his favor and the instructions given to his solicitors in America, and a record was kept of such correspondence and of meetings. For the sake of identification this record was kept under the heading of Alex. McNab, Frank Waterhouse or Frank Waterhouse, Ltd. Mr. McNab's name was used as the matter was first brought to the late Mr. Gill's notice by him. Mr. Waterhouse's name was used as he was primarily concerned as defender in the suit. I have not been able to discover any evidence that Mr. McNab made any payment to the late John Gill or to the Commercial Bank of Scotland, Ltd., for the said assignation except in a letter addressed by the late John Gill to Messrs. Hughes, McMicken, Dovell & Ramsey, dated 23rd April, 1908, where it is stated that 'Alexander McNab has paid

(Deposition of James Gill.)

£397 and interest to account £778.' I have been [28] unable to check the receipt of these payments by the late John Gill and I have no evidence other than the statement in said letter that Mr. McNab made the foresaid payments of £397 and £778. I have no knowledge of any agreement, written or verbal, between the late John Gill and Alexander McNab or any other person of the nature referred to in this interrogatory. The executors of the late John Gill reserve any right competent to them in the event of their not recovering the whole of the debt under this suit to obtain from the Commercial Bank of Scotland, Ltd., an assignation or assignations to the guarantees granted by the said Alexander McNab and others and to recover from them."

(Answering Cross-Interrogatory No. 6:) "The late John Gill has acted as solicitor for Mr. McNab during the period from 1900 to the date of his death. I believe that the late John Gill did only a small portion of Mr. McNab's legal business and that Mr. McNab during that period consulted other solicitors both in Scotland and England."

The plaintiff thereupon offered and (over defendant's objection) read in evidence the deposition of James Lawson Anderson, taken before Alexander Guild, Commissioner, at Edinburgh, Scotland, as follows:

(The defendant had in due season moved to suppress this deposition for certain alleged defects in the taking thereof, which was overruled by the Court, the defendant excepting.)

Deposition of James Lawson Anderson, for Plaintiff.

(Answering Interrogatories Nos. 1, 2 and 3:)
“My name is James Lawson Anderson. I am 64 years of age and I reside at 45 Northumberland Street, Edinburgh. I am the secretary [29] of the Commercial Bank of Scotland, Ltd., Edinburgh. I am acquainted with the Commercial Bank of Scotland, Ltd., and am secretary of said bank and have been for nine years.”

(Answering Interrogatories Nos. 4, 5 and 6:)
“The Commercial Bank of Scotland, Ltd., was incorporated as a corporation by Royal Charter granted at London by King William IV on 5th August, 1831. The bank carries on the business of banking in all its branches. Its principal place of business is at 14 George Street, Edinburgh.”

(Answering Interrogatory No. 7:)
“I attach to my deposition, marked Exhibit ‘A,’ copy of Warrant for Charter certified under my hand to be a true copy. I have no seal of office.”

The plaintiff thereupon offered the said Charter in evidence, a copy of which is hereto attached, marked Exhibit “A” and made a part hereof.

The reading of the deposition thereupon proceeded as follows:

(Answering Interrogatory No. 8:)
“The great majority of the stockholders of the bank on 1st January, 1897, were resident in Scotland and have since then been continuously resident therein:

(Answering Interrogatories Nos. 9 and 10:)
“I am aware that accounts were kept at the London

(Deposition of James Lawson Anderson.)

office of the bank in the name of Frank Waterhouse, Ltd. The amount due to the bank by Frank Waterhouse, Ltd., on the said accounts was paid to the bank by John Gill, solicitor Supreme Courts, Edinburgh, and the bank granted an assignation in his favor of the amount so paid and of the guarantee by Frank Waterhouse in favor of [30] the bank. The assignation was granted on 8th October, 1907."

(Answering Interrogatory No. 11:) "The assignation by the bank in favor of the said John Gill, dated 8th October, 1907, has been exhibited to me. I have signed a docquet on this assignation to identify it. It is signed by N. B. Gunn and Thomas W. Tod, Directors, and by Alexander Bogie, Manager of said Commercial Bank of Scotland, Ltd. I recognize and can identify each of the signatures to said assignation as being the true signatures of Neil Ballingall Gunn and Thomas Wordie Tod, two of the directors of the bank, and of Alexander Bogie, the manager of the bank."

(Answering Interrogatory No. 12:) "The said Neil Ballingall Gunn and Thomas Wordie Tod were duly qualified and acting directors, and the said Alexander Bogie was the duly qualified and acting manager of the Commercial Bank of Scotland, Ltd., at the time the assignation was executed."

(Answering Interrogatory No. 13:) "The said Neil Ballingall Gunn and Thomas Wordie Tod, as directors, and the said Alexander Bogie, as manager, were duly authorized to execute said assignation on behalf of said Commercial Bank of Scotland, Ltd."

(Answering Interrogatories Nos. 14 and 15:) "A

(Deposition of James Lawson Anderson.)

letter was written by me for the Commercial Bank of Scotland, Ltd., to Frank Waterhouse, relative to the accounts of Frank Waterhouse, Ltd., on 31st October, 1906, and I append a copy of said letter to my deposition as Exhibit 'B'."

At this point the original of said letter was demanded of and produced by the defendant, and was offered and received in evidence as Plaintiff's Exhibit "C." A copy thereof is hereto attached and made a part of this bill of [31] exceptions as such exhibit.

Plaintiff thereupon offered in evidence the assignation identified by the witnesses Gill and Anderson, a copy of which assignation is hereto attached, marked Exhibit "D" and made a part hereof.

Defendant objected to this assignment, on the ground that the instrument offered in evidence does not purport to assign the debt of the bank against Frank Waterhouse, Ltd. Ruling was reserved on this objection.

Defendant also objected to the reception in evidence of the statement of account attached to the alleged assignment, and ruling on this objection was reserved.

The defendant waived the cross-examination, and thereupon the plaintiff offered it in evidence.

Cross-examination.

(Answering Cross-Interrogatories Nos. 1 and 2:)
"Alexander McNab was not a shareholder in said bank during the period mentioned or any part thereof. The debt to the bank and the letter of

(Deposition of James Lawson Anderson.)

guarantee by Frank Waterhouse were assigned by written instrument. (Plaintiff's counsel here admitted the "written instrument" here referred to was said Exhibit "D.") The bank also held letters of guarantee by Alexander McNab, John McNab, R. B. Archibald, Marshall McEwen & Company, and the partners thereof, and John M. Mitchell. These guarantees have not been assigned or transferred by this bank, but on payment being made by John Gill they were sent to him. John McNab is dead. I don't know the date of his death. A note of the bank's claim under the guarantee was sent to the [32] law agents acting for his representatives on 19th January, 1903. The other guarantors are alive, so far as I know. No release appears to have been granted by the bank to any of the said guarantors."

(Answering Cross-Interrogatory No. 4:) "The payment of £22,897:16:5 was made to the bank by the said John Gill in exchange for the assignation in his favor. The payment was made by a cheque of his own, I understand. I have not the particulars of the cheque."

This answer was received in evidence over the objection of the defendant that it was evidently hearsay,—the Court reserving its ruling thereon and upon defendant's motion to strike same.

(Answering Cross-Interrogatory No. 5:) "As already stated, I did not participate in the negotiations leading up to the execution of the assignation to the said John Gill and have no knowledge of any understanding, agreement or contract, written or verbal, between the defendant, John Gill and Alex-

(Deposition of James Lawson Anderson.)

ander McNab, or between John Gill and Alexander McNab. There was no understanding, agreement or contract, written or verbal, in regard to this matter between the bank and Alexander McNab.”

This answer was received in evidence over the objection of the defendant that it was evidently hearsay,—defendant excepting.

(Answering Cross-Interrogatory No. 6:) “To the best of my knowledge no payment was made or bill or note granted to the bank by Alexander McNab at the time or subsequent to the execution of said assignation. I am not in a position to speak as to the payments to John Gill, if any. I do not know what interest John Gill had in paying up the advance and [33] taking an assignation of the said guarantee. He did not ask for an assignation of the other guarantees, so far as I am aware.”

(Answering Cross-Interrogatory No. 7:) “The other guarantees were delivered to the said John Gill.”

(Answering Cross-Interrogatory No. 8:) “I have no recollection whether the Commercial Bank of Scotland, Ltd., was notified of the execution of the memorandum of agreement between Frank Waterhouse and Frank Waterhouse, Ltd., on or about 6th October, 1900. I know nothing about the bonds referred to. I do not know when Frank Waterhouse, Ltd., ceased active business. Frank Waterhouse, Ltd., transacted its banking business with the London office of the bank, and this is information which they alone would be in a position to give.”

(Deposition of James Lawson Anderson.)

(Answering Cross-Interrogatory No. 9:) "I do not know whether demands for payment were made upon Frank Waterhouse, Ltd., and the officials of that company prior to 31st October, 1906. I can find no record of payment having been called for from the other guarantors and I am unable to say now why that was not done. The letter of 31st October, 1906, although signed by me, was not written on my instructions. Alexander McNab was a customer of the bank during the period mentioned and was reputed wealthy. He resided mostly, I think, at Middleton Kerse, Menstrie. He was a distiller and a director of public companies. The other guarantors, with the exception of Frank Waterhouse, were resident in England or Scotland at the time the guarantees were granted. They do not all appear to have been engaged in business." [34]

The plaintiff thereupon offered and read in evidence the deposition of William McEwen, taken before W. H. Quarrell, Commissioner, at London, England, whose testimony was as follows:

Deposition of William McEwen, for Plaintiff.

(Answering Interrogatory No. 1:) "My name is William McEwen. I am 45 years of age and I reside at the Spa Hotel, Tunbridge Wells. I am a chartered accountant."

(Answering Interrogatory No. 2:) "I am acquainted with the corporation called Frank Waterhouse, Limited. I was the Secretary of this company until it went into voluntary liquidation when I

(Deposition of William McEwen.)

was appointed the liquidator. I am still liquidator of the company."

(Answering Interrogatory No. 3:) "I have no copy of the charter of articles of incorporation of the company among my papers."

(Answering Interrogatory No. 4:) "The directors of the company from time to time were Alexander McNab, John M. Mitchell, R. Bruce Archibald, Frank Waterhouse and Charles Richardson. The secretary of the company was John M. Mitchell until August, 1898, when I was appointed secretary."

(Answering Interrogatory No. 5:) "I have examined the copy of the accounts of Frank Waterhouse, Ltd., with the Commercial Bank of Scotland, Ltd., appended to the deposition of George Sutherland Coutts, taken on the 17th December, 1913, and I am satisfied that said accounts correctly set forth the amount advanced to said Frank Waterhouse, Ltd. The amounts due by Frank Waterhouse, Ltd., to the Bank at 31st October, 1903, were as follows: (1) On the current or general account £1151.17.9. (2) On the loan account £15,000 and (3) on No. 2 account £3479. 13. 3. These amount in all, with interest to February 15, 1907, to £22,897. 16. 5." [35]

The defendant objected to this answer on the ground that it was hearsay, was not the best evidence of the transactions, was not the proper way to prove book entries, the books nor said account therein have not been proved. The Court reserved ruling on the objection until the close of plaintiff's case.

(Answering Interrogatories Nos. 6 and 7:) "The said accounts correctly shew the manner and the

(Deposition of William McEwen.)

amounts in which said accounts of Frank Waterhouse, Ltd., were operated upon by cheques. The amounts shewn by said accounts to have been paid out for the benefit of Frank Waterhouse, Ltd., were actually so paid.

(Answering Interrogatory No. 8:) "I have not in my possession the cheques drawn upon the loan account. I have the cheques which operated on the current or general account and No. 2 account, but as liquidator of the company I cannot part with them. I have compared them with the copy accounts marked A, B and C appended to the said deposition of Mr. George Sutherland Coutts, and they agree with the figures stated in that account."

(Answering Interrogatory No. 9:) "The advances made to Frank Waterhouse, Ltd., were made at the instance and request of the board of directors of the company."

(Answering Interrogatory No. 10:) "Demands were made upon the Company and numerous verbal demands were made upon the directors and secretary by the bank for payment of the indebtedness shewn to be due by the company by said accounts."

(Answering Interrogatories Nos. 11 and 12:) "No. payments have been made by the company since 31st October, 1903. I should explain that on 7th April, 1908, I was appointed the voluntary liquidator of the company at an extraordinary [36] general meeting of the shareholders held on that date. (Subsequently I wrote to the Commercial Bank of Scotland, Ltd., intimating my appointment and asking them to send me a certified statement of their claims in the

(Deposition of William McEwen.)

liquidation. They informed me that the company's indebtedness to them has been settled by Mr. John Gill, S. S. C. Edinburgh, and that they had assigned their claim to him.) Mr. Gill subsequently rendered his claim to me as liquidator of the company and I admitted the claim. I have paid to the said John Gill, and after his death to his executors, dividends in respect of Mr. Gill's claim in the liquidation. The sums which I have paid to him and them to date amount to £2924. 17. 4."

The defendant moved to strike that part of the answer to interrogatory No. 12 which is in brackets, because hearsay, and the Court reserved its ruling thereon.

Cross-examination.

(Answering Cross-Interrogatory No. 1:) "Frank Waterhouse, Ltd., was incorporated in December, 1897. I do not know who were the original incorporators. Alexander McNab, Frank Waterhouse and Jahn Mitchell Mitchell were the original shareholders. The following became shareholders on 31st March, 1898:—John Marshall, John McNab and Bruce Archibald. On 14th April, 1898, O. J. Trinder became a shareholder and on 10th February, 1899, Charles Richardson became a shareholder."

(Answering Cross-Interrogatory No. 2:) "The company was engaged in transport and insurance business. The business of the company was principally conducted in Seattle and Tacoma. The registered office of the company was situated in London, England."

(Deposition of William McEwen.)

(Answering Cross-Interrogatory No. 3:) "I became secretary [37] of the company in August, 1898. I had no relation with the company prior to that time. I had no business relationship with Alexander McNab at the time when I became secretary of the company. I have since then been secretary and auditor of one or two companies in which Mr. McNab is interested as a director or otherwise."

(Answering Cross-Interrogatory No. 4:) "Frank Waterhouse, Ltd., ceased active business operations in America about October, 1900, and was formally liquidated by the shareholders on 7th April, 1908."

(Answering Cross-Interrogatory No. 5:) "I am the William McEwen who executed on 6th October, 1900, on behalf of the company, the memorandum of agreement, a copy of which is to these answers attached. I was authorized to enter into said memorandum of agreement by the board of directors."

Defendant thereupon offered said copy of agreement so attached, to which the plaintiff objected as irrelevant and immaterial, the Court reserving its ruling; said copy being hereto attached, marked Exhibit "I" and made a part hereof.

(Answering Cross-Interrogatory No. 6:) "Frank Waterhouse, Ltd., after the said memorandum of agreement was signed, ceased to carry on any active business operations in America, but the company continued in existence until 1908, when it was formally liquidated by the shareholders."

(Answering Cross-Interrogatory No. 7:) "The indebtedness of Frank Waterhouse, Ltd., to the

(Deposition of William McEwen.)

Commercial Bank of Scotland, Ltd., on 6th October, 1900, was £19,613. 9. 8, exclusive of accrued interest."

(Answering Cross-Interrogatory No. 8:) "I have no recollection now whether the Commercial Bank of Scotland, Ltd., were [38] notified of the said memorandum of agreement. The bonds of Frank Waterhouse & Co. were lodged with the bank for safe custody. Mr. Alexander McNab was informed of the contents of said agreement on or about 6th October, 1900. A summary of the agreement was submitted to Mr. McNab."

(Answering Cross-Interrogatory No. 9:) "Nothing was withheld from the Commercial Bank of Scotland, Ltd."

(Answering Cross-Interrogatory No. 10:) "There were three separate accounts in the name of Frank Waterhouse, Ltd., with the Commercial Bank of Scotland, Ltd. One was known as the 'Loan Account,' and the other known as 'No. 2 Account,' and the third was the 'Current or General Account.' "

(Answering Cross-Interrogatories 11, 12 and 13:) "I have no recollection of having seen the guarantees. I understand the general account was secured by a guarantee by Mr. McNab and Mr. Mitchell."

(Answering Cross-Interrogatory No. 14:) "Numerous advances were made subsequent to 6th October, 1900, and on the other hand sums were lodged to the credit of the accounts after that date. These are shown in the accounts appended to the deposition of George Sutherland Coutts."

Defendant moves to strike this answer, because

(Deposition of William McEwen.)

hearsay, and not responsive to the question. Motion denied, defendant excepting.

(Answering Cross-Interrogatory No. 15:) "I have no recollection of having seen the guarantees referred to." [39]

The plaintiff thereupon offered in evidence the copy of accounts identified by the witness William McEwen, which was identified as Plaintiff's Exhibit "E," a copy of which is hereto attached, marked exhibit "E" and made a part hereof.

The defendant objected to the same, because not proper evidence and incompetent, irrelevant and immaterial, no proof books correctly kept or that the entries were contemporaneous with the transactions, or of the person making them that they were correctly made, or that such person had any knowledge of the transactions, or that the books were the books of the bank or current books kept in the ordinary current business of the bank, and upon the further ground that the witness had no personal knowledge of the transactions, and therefore his testimony is hearsay.

The Court reserved its ruling on the objection.

Deposition of William Bamford Lang, for Plaintiff.

Plaintiff thereupon offered and read in evidence the deposition of William Bamford Lang, taken before Alexander Guild, Commissioner, at Edinburgh, Scotland, which deposition was as follows:

(The defendant had also moved in due season to suppress this deposition for certain alleged defects

(Deposition of William Bamford Lang.)

in its taking, which motion was overruled, the defendant excepting.)

The defendant objected to the reading of the deposition on the same grounds, viz.: The witness is not the person named in the commission, and the deposition was taken before an officer in Edinburgh, whereas the commission directed it to be taken in London before a different officer.

(Answering Interrogatories Nos. 1, 2 and 3:) “My name is William Bamford Lang—not William Bamford Laing as stated in [40] the interrogatories addressed to me. I am 55 years of age, and I reside at 22 Sardinia Terrace, Glasgow. I am an assistant agent in the Commercial Bank of Scotland, Ltd., and am acquainted with said bank.

“I am assistant agent in the Glasgow office of the Commercial Bank of Scotland, Ltd. I have been associated with the Commercial Bank of Scotland, Ltd., since 1876. I was securities clerk, 1890 to 1894, and accountant, 1894 to 1911, in the London office.”

(Answering Interrogatory No. 4:) “I recollect that when I was in the London office of the bank, Frank Waterhouse, Ltd., conducted business with that bank. I have not, however, seen these accounts for some years. The assignation by the Commercial Bank of Scotland, Ltd., in favor of John Gill, S. S. C. Edinburgh, dated 8th October, 1907, has, however, been exhibited to me and I have examined the accounts appended thereto, and find that they are excerpted from the books of the bank and certified by

(Deposition of William Bamford Lang.)

me as correct. I have signed a docquet on this account to identify it."

This answer was read over the objection and exception of the defendant, because not responsive to the question, the witness did not testify from his own knowledge but from hearsay, and the other grounds stated in objection to the account itself.

(Answering Interrogatories Nos. 5 and 6:) "The accounts were kept by the ledger clerks employed in the London office from time to time. They were kept upon the regular books of the Commercial Bank of Scotland, Ltd., and the entries in said accounts were made in the regular course of business of said bank."

(Answering Interrogatory No. 7:) "I have examined the [41] accounts attached to the said assignment by the Commercial Bank of Scotland, Ltd., in favor of the said John Gill, and they are full copies of the accounts of Frank Waterhouse, Ltd., taken from the books of the bank. They are certified correct by me, and the books from which they were taken were the ordinary books of the bank kept in the regular course of the bank's business and they were in the custody and control of the bank."

This answer was received over the objection and exception of the defendant on the ground that it was hearsay, that witness did not make the entries, had no personal knowledge of them, they were not kept under his supervision, and upon the grounds of objection theretofore made to the account itself.

(Answering Interrogatory No. 8:) "I am not in a

(Deposition of William Bamford Lang.)

position to refer to the books of the London office of the bank where the accounts are kept. The indebtedness to the bank was not repaid until 15th February, 1907, and the interest on the said advances was allowed to accumulate until said date. At that date the interest payable was as follows: On the current or general account the interest payable was £191:17. On the loan account the interest payable was £2471:18:2. On No. 2 account the interest payable was £602:10:3. The position accordingly on 15th February, 1907, was that Frank Waterhouse, Ltd., were due to the Commercial Bank of Scotland, Ltd., including interest, the sum of £22,897:16:5."

(Answering Interrogatory No. 9:) "The sums advanced by the Commercial Bank of Scotland, Ltd., were advanced against cheques drawn by Frank Waterhouse, Ltd., upon the Commercial Bank of Scotland, Ltd."

(Answering Interrogatory No. 10:) "I refer to the accounts [42] appended to the said assignation by the Commercial Bank of Scotland, Ltd., in favor of the said John Gill, which shows the dates and amounts of all the deposits and withdrawals."

The answer to Interrogatory No. 10 was received over the objection and exception of the defendant upon the same grounds as No. 7.

(Answering Interrogatories Nos. 11 and 12:) "The accounts were operated on by Frank Waterhouse, Ltd., by cheque. The cheques were signed by two directors and by the secretary of Frank Waterhouse, Ltd."

(Deposition of William Bamford Lang.)

(Answering Interrogatory No. 13:) "The original cheques were returned to Frank Waterhouse, Ltd., from time to time in accordance with the custom of the bank. The cheques on the loan account were retained by the bank."

(Answering Interrogatory No. 14:) "I have no cheques in my possession."

(Answering Interrogatory No. 15:) "The payments shown by said accounts were actually made against cheques drawn by Frank Waterhouse, Ltd."

(Answering Interrogatory No. 16:) "I have no knowledge now at whose request the advances to Frank Waterhouse, Ltd., were made."

(Answering Interrogatory No. 17:) "Interest on the advances were charged against the current or general account and No. 2 account periodically. These interests will be found debited in the current or general account under dates 7th May, 1898; 10th September, 1898; 31st October, 1898; 4th February, 1899; 6th May, 1899; 30th October, 1899; 26th February, 1900; 5th May, 1900; 3d August, 1900; 27th October, 1900; 31st October, 1900; 1st February, 1901; 30th April, 1901; 3d August, [43] 1901; 28th October, 1901; 31st October, 1901; 7th February, 1902; 28th April, 1902; 2d August, 1902; 27th October, 1902; 31st October, 1902; 7th February, 1903; 2d May, 1903; 1st August, 1903; and 31st October, 1903. The interests debited in No. 2 account will be found under dates:—31st October, 1901; 31st October, 1902 and 31st October, 1903. These interests were also debited in the bank pass-book of Frank Waterhouse, Ltd.,

(Deposition of William Bamford Lang.)
and were thus directly brought to their notice.”

(Answering Interrogatory No. 19:) “The correctness of the accounts was never disputed by Frank Waterhouse, Ltd., or by anyone else.”

Cross-examination.

(Answering Cross-Interrogatory No. 1:) “I was head securities clerk from 1890 to 1894, and accountant from 1894 to 1911 in the London office, and since 1911 have been assistant agent in Glasgow.”

(Answering Cross-Interrogatory No. 2:) “I recollect that Frank Waterhouse, Ltd., transacted banking business with the Commercial Bank of Scotland, Ltd., and obtained cash advances from the bank. My recollection has been refreshed by an examination of the accounts appended to said assignation by the Commercial Bank of Scotland, Ltd., in favor of said John Gill.”

(Answering Cross-Interrogatory No. 3:) “Mr. Alexander McNab was a customer of the bank when the account with Frank Waterhouse, Ltd., was opened, and still is a customer.”

(Answering Cross-Interrogatory No. 4:) “I am not aware that the advances to Frank Waterhouse, Ltd., were primarily made upon the credit of Alexander McNab. They were made on the following guarantees, viz.: (1) Letter of Guarantee by [44] Frank Waterhouse, Ltd., of 147 Cannon Street, London; Alexander McNab of Middleton Kerse, Menstrie, Clackmannanshire; John McNab of Swinton, Berwickshire; Robert Bruce Archibald, Devondale, Tillicoultry; and Messrs. Marshall McEwen & Com-

(Deposition of William Bamford Lang.)

pany, wine merchants, 146 St. Vincent Street, Glasgow, and John Marshall and Patrick McEwen, the partners of that firm as such and as individuals, for £15,000; (2) Letter of Guarantee by the said Alexander McNab, Robert Bruce Archibald and John Mitchell Mitchell, Solicitor, 147 Cannon Street, London, for £5,000; (3) Letter of Guarantee by the said Alexander McNab and John Mitchell Mitchell for £1,000; and (4) Letter of Guarantee by Frank Waterhouse, merchant, Tacoma, Washington, United States of America, for £21,000 and interest.

(Answering Cross-Interrogatory No. 5:) "The advances made by the bank to Frank Waterhouse, Ltd., were made under separate accounts. One of these accounts was known as the loan account and £15,000 was advanced to Frank Waterhouse, Ltd., by the bank on this account. Another account was known as No. 2 account and £5,000 was advanced to Frank Waterhouse, Ltd., by the bank on this account. The other account was the current or general account of Frank Waterhouse, Ltd."

(Answering Cross-Interrogatory No. 6:) "The bank received no security except the letters of guarantee before mentioned granted by the said Frank Waterhouse, Ltd., Alexander McNab, John McNab, Robert Bruce Archibald, Marshall McEwen & Company, and the individual partners thereof, John Mitchell Mitchell and Frank Waterhouse."

(Answering Cross-Interrogatory No. 7:) "The addresses of the various guarantors have been heretofore stated in my answer. Mr. Frank Waterhouse

(Deposition of William Bamford Lang.)

is a merchant. Mr. Alexander McNab is a director of companies. John McNab is, I understand, [45] dead. I don't know the occupation of Robert Bruce Archibald. Messrs. Marshall McEwen & Company are wine merchants, and John Mitchell Mitchell is a solicitor."

(Answering Cross-Interrogatory No. 10:) "So far no information about Robert Bruce Archibald. I don't know whether he is now living or dead. So far as I know, the bank has done nothing to release him or his estate."

(Answering Cross-Interrogatory No. 9:) "I understand that John McNab is dead. I don't know when he died or where his estate is located and administered. So far as I know, the bank has done nothing to release him or his estate."

(Answering Cross-Interrogatory No. 10:) "So far as I know, the bank has done nothing to release the said John Mitchell Mitchell."

(Answering Cross-Interrogatory No. 11:) "So far as I know, the bank has done nothing to release Alexander McNab and Marshall McEwen & Company of their guarantees."

(Answering Cross-Interrogatory No. 12:) "I have no recollection of a memorandum of agreement between Frank Waterhouse & Co., and Frank Waterhouse, Ltd., dated October, 1900."

(Answering Cross-Interrogatory No. 13:) "For advances made by the bank to Frank Waterhouse, Ltd., subsequent to the agreement of October, 1900, I refer to the accounts appended to the assignation

(Deposition of William Bamford Lang.)

by the Commercial Bank of Scotland, Ltd., in favor of said John Gill.”

(Answering Cross-Interrogatory No. 14:) “I had no negotiation with any party regarding the assignation of the claim by the bank. This was all arranged by the head office in Edinburgh and at the time I was in the London office. The advances were repaid by the late Mr. John Gill, S. S. C., Edinburgh.” [46]

(Answering Cross-Interrogatory No. 15:) “I am unable to answer this question as these matters, if dealt with, would be carried out by the head office of the bank.”

(Answering Cross-Interrogatory No. 16:) “I do not know what relation the said John Gill bore to the Commercial Bank of Scotland, Ltd., from the year 1898, to the date of his death.”

Each of the foregoing depositions was taken under a stipulation, a copy of which is attached to this bill of exceptions immediately preceding the interrogatories and cross-interrogatories attached hereto.

The plaintiff thereupon offered in evidence Chapter 338 of the Acts of Congress of the First Session of the Fifty-sixth Congress of the United States, as follows:

“An Act to provide an American register for the steamship ‘Garonne.’

“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Commissioner of Navigation is hereby authorized and directed to cause the foreign-built steamship ‘Garonne,’ owned by Charles

(Deposition of William Bamford Lang.)

Richardson, of Tacoma, State of Washington, and Frank Waterhouse, of Seattle, State of Washington, *citizens of the United States*, to be registered as a vessel of the United States.

“Approved April 27th, 1900.”

To the introduction of this Act the defendant objected on the ground the recitals in the Act are not proof of any fact in litigation between two private individuals. The Court reserved its ruling on the objection. [47]

Plaintiff further offered in evidence a certified copy of the articles of incorporation of Frank Waterhouse & Company, Incorporated, dated the 6th of October, 1900, bearing upon the citizenship of Mr. Waterhouse. A true copy thereof is hereto attached, marked Exhibit “F” and made a part hereof.

Plaintiff further offered in evidence the oath of registry, subscribed and sworn to by Frank Waterhouse before S. B. House, deputy collector of customs, on the 10th of May, 1900, for the purpose of securing American registry of the steamship “Garonne,” and in which he swears that he is a citizen of the United States and not a subject of any foreign power; a copy of which is hereto attached, marked Exhibit “G” and made a part hereof.

Plaintiff further offered in evidence a certified copy of an oath as director of the Boston National Bank, subscribed by Frank Waterhouse on January 26, 1903, before Geo. F. Begg, a notary public, in which he swears that he is a citizen of the United

States; a copy of which oath is hereto attached, marked Exhibit "F" and made a part hereof.

Motion for Nonsuit or Dismissal of Plaintiff's Action.

Plaintiff having rested, the defendant moved for a nonsuit or dismissal of plaintiff's action, for the reasons:

"First. That under the testimony and the pleadings the Court has no jurisdiction of the action; and

Second. Because the testimony introduced is not sufficient to warrant a verdict in favor of the plaintiff." [48]

After argument of counsel, the Court denied the first ground of said motion, but granted the second ground thereof; and ordered and directed that the cause be withdrawn from the jury, and judgment of dismissal be entered herein; to which order of the Court the plaintiff excepted, and his exception was allowed.

Oral Opinion on Motion for Nonsuit, etc.

In rendering its decision in sustaining said motion on the second ground thereof, the Court delivered the following oral opinion:

"I believe that this guarantee that was executed by the defendant, agreeing to pay the past due obligation of the Waterhouse Company, Limited, on condition that extensions or indulgences of time would be granted—that is the sense I think of the instrument—that it would require some act on the part of the bank in order to give vitality to that instrument; otherwise it would be entirely unilateral, there would be simply an agreement upon the one side without any movement or binding force upon the

other. Especially would that be true as to the past due obligations, and I think that they were all past due excepting perhaps £117—I do not recall now—that was advanced—well, more than one; there were several of the items there. And upon the other question of payment, I am convinced in my own mind, taking the conduct of the parties as disclosed by the evidence, that the payment when it was made in February was payment. I in my own mind believe that the assignment was an after-thought. The relation of Mr. McNab, who appears to be one of the guarantors to the extent of £21,000, the same amount for which Mr. Waterhouse became a guarantor, and I think perhaps [49] in the same accounts, the three different accounts, the testimony of Mr. Anderson discloses that this was paid by Mr. Gill, and I think the testimony likewise discloses either on the part of Mr. Gill or the testimony of Mr. Anderson that this was paid upon the suggestion of Mr. McNab. Now, Mr. McNab was the attorney—Mr. McNab was a client of Mr. Gill. Mr. McEwen in his testimony on cross-examination identifies a contract between the defendant Waterhouse Company, Incorporated, of which Mr. McNab was one of the stockholders, in which this indebtedness was to be taken care of, and when we take all of these things into consideration, the motive that would prompt Mr. McNab, the testimony of the witnesses who testify with relation to the payment and the circumstances surrounding the payment as made, the disclosure of the witnesses' ignorance of the things which actually did take place, and the testimony sim-

ply directed to the things which affirmatively appear on the record, and then the absence of the testimony on the part of the bank from persons who know as to what was actually done and the intention of the parties, and then the assignation as it is called which was executed in October following, eight months after the payment was made as recorded in the books of the bank, and the testimony of Anderson, who seems to be advised and states that the bank afterwards granted the assignation, when we take all these things into consideration, I am in my own mind convinced that the payment, when it was made by Gill, was made on behalf of these other parties upon whom the obligation rested, and it was not at that time with any intention of granting an assignment, and this is further confirmed by the testimony that no assignment was made and taken from the bank of McNab and of these other parties. The only assignment that was made was [50] simply the assignment of Waterhouse.

So I think that the objections to the offers of testimony which have been reserved must be sustained and the motion to dismiss must be granted.” [51]

[Title of Court and Cause.]

**Stipulation Re Appointment of Commissioner to
Take Depositions, etc. . .**

IT IS STIPULATED by and between the parties hereto, that a commission be directed to W. H. Quarrell, Commissioner for Oaths, 3 East Indiana Avenue, London, England, to take the testimony of

William McEwen, James Robb, and William Bamford Laing, at London, England, and to Alexander Guild, Notary Public, 5 Rutland Square, Edinburgh, Scotland, to take the testimony of James Gill and James Lawson Anderson, at Edinburgh, Scotland; said testimony to be taken upon the interrogatories and cross-interrogatories on file herein, which shall be attached to said commission; that when said testimony is taken and reduced to writing, the same shall be signed by the respective witnesses, certified to by the officers taking said testimony, and returned to the clerk of this court, then to be used by either party to the above-entitled action upon the trial thereof, all objections to the making of said testimony, save to the relevancy or materiality of any question or answer or part thereof, being hereby expressly waived, but the right to object to the materiality or relevancy of any question or answer contained therein upon the trial of said action being hereby reserved.

HUGHES, McMICKEN, DOVELL & RAMSEY,

Attorneys for Plaintiff.

BOGLE, GRAVES, MERRITT & BOGLE,
Attorneys for Defendant. [52]

[Title of Court and Cause.]

**Interrogatories to be Propounded to James Gill on
Behalf of Plaintiff.**

Interrogatory No. 1: State your name, age, residence and occupation.

Interrogatory No. 2: State whether or not you are a practitioner in the courts of Scotland.

Interrogatory No. 3: State whether or not you are learned in the law of Scotland and Great Britain.

Interrogatory No. 4: Were you acquainted with John Gill, the plaintiff in the above-entitled action, during his lifetime, and state what, if any, relationship you bore to him?

Interrogatory No. 5: Where did the said John Gill reside from the time of the commencement of this action in December, 1907, until the time of his death? [53]

Interrogatory No. 6: Of what country was the said John Gill a citizen and subject from the time of the commencement of this action until the time of his death?

Interrogatory No. 7: When and where did the said John Gill die?

Interrogatory No. 8: Have you in your possession what purports to be an assignation from The Commercial Bank of Scotland, Limited, in favor of John Gill, dated 8th of October, 1907, and purporting to be signed by N. B. Gunn and Thomas W. Tod, as directors, and Alex Bogie, manager, of The Commercial Bank of Scotland, Limited, purporting to assign to the said John Gill a letter of guarantee granted by Frank Waterhouse, together with the claim of said bank for all sums, with interest, to the extent of 21,000 pounds, due to said bank from the said Frank Waterhouse?

Interrogatory No. 9: If you have said assignation

in your possession, please attach the same to your deposition.

Interrogatory No. 10: State whether or not said assignation is properly executed under the laws of Scotland, and whether or not the same, as executed, operates under the laws of Scotland to convey to the said John Gill what the same by its terms purports to convey.

Interrogatory No. 11: What is the law of Great Britain relative to the admission in evidence of copies of entries in bankers' books? [54]

Interrogatory No. 12: Please state any other matter or thing material to the issues herein which occurs to you and concerning which you have not been interrogated by the foregoing interrogatories.

HUGHES, McMICKEN, DOVELL & RAM-
SEY,

Attorneys for Plaintiff. [55]

[Title of Court and Cause.]

**Cross-interrogatories to be Propounded to James
Gill, on Behalf of Defendant.**

Cross-interrogatory 1:

If in answer to direct interrogatories you have stated that you were acquainted with the plaintiff John Gill during his lifetime, please state what was the business or occupation of John Gill. Also state what connection, if any, he had with the Commercial Bank of Scotland, Limited, and how long had such connection existed prior to his death.

Cross-interrogatory 2:

If in answer to direct interrogatory No. 8 you have stated that you have in your possession the document therein referred to, please state how said document came into your possession.

Cross-interrogatory 3:

Did John Gill at the time of his death, or at any other [56] time so far as you know, hold or have in his possession under assignment or transfer to him or to any other person, a letter or letters of guaranty of payment of indebtedness of Frank Waterhouse, Limited, to the Commercial Bank of Scotland, Limited, given by Alexander McNab, I. McNab, R. B. Archibald, Marshall McEwen & Company, or J. M. Mitchell, sometimes known as John M. Mitchell? If so, what became of such letters of guaranty? Did John Gill, plaintiff, have in his possession or control any other document or writing, assignation, transfer or conveyance relating to the indebtedness of Frank Waterhouse, Limited, to the Commercial Bank of Scotland, Limited, or given and executed as security for such indebtedness, other than the document referred to in direct interrogatory No. 8?

Cross-interrogatory 4:

If you have stated that you have in your possession the document referred to in direct interrogatory No. 8, state how the same came into your possession. If you answer that it came through the estate of John Gill, then state how the same came into the possession of John Gill. Did he hold the same as agent, trustee, or representative of Alex-

ander McNab or of any other person? What money or moneys did John Gill pay to the Commercial Bank of Scotland for such document? How were such payments made? If by check, note or bill, please give date and names of all parties attached to such instrument.

Cross-interrogatory 5:

Were you in any way connected with the administration of the estate of John Gill? If so, state your connection therewith fully. Were there any outstanding accounts, bills, or [57] notes, or business transactions between Alexander McNab and John Gill as shown by the papers in the estate of John Gill, or in his possession or control at the time of his death, relating directly or indirectly to the business of Frank Waterhouse, Limited, with the Commercial Bank of Scotland, or to the letter of guaranty of defendant Frank Waterhouse. If so, explain the same fully and in detail. Did Alexander McNab pay, either to John Gill or the Commercial Bank of Scotland, Limited, any part of the sum or sums which may have been paid by John Gill to said bank for said instrument referred to in direct interrogatory No. 8? Was there any agreement, written or verbal, between John Gill and Alexander McNab, or with any other person, whereby said McNab was entitled to or obligated to repay to John Gill any moneys advanced or paid by John Gill to the Commercial Bank of Scotland, Limited, on this transaction, or under which Alexander McNab was or is entitled to share in the proceeds of

this suit, or of any collection made from said letter of guaranty of said Frank Waterhouse, defendant, or to repay to or indemnify John Gill against any losses he might sustain by reason of any moneys he paid or advanced to the Commercial Bank of Scotland, Limited, on said letter of guaranty, or in the purchase thereof?

Cross-Interrogatory 6:

If you have stated that John Gill was a solicitor or attorney at law, please state whether he was the legal adviser of Alexander McNab at any time between the year 1900 and the time of his death.

HAROLD PRESTON and
BOGLE, GRAVES, MERRITT & BOGLE,

Attorneys for Defendant. [58]

[Title of Court and Cause.]

**Interrogatories to be Propounded to James Lawson
Anderson, George Street, Edinburgh, Scotland,
on Behalf of Plaintiff.**

Interrogatory No. 1: State you name, age, residence and occupation.

Interrogatory No. 2: Are you acquainted with the Commercial Bank of Scotland, Limited?

Interrogatory No. 3: Have you any official connection with said Commercial Bank of Scotland, Limited, and if so, state for how long.

Interrogatory No. 4. If said Commercial Bank of Scotland, Limited, is a corporation, state when and where and under what law it was organized as a corporation.

Interrogatory No. 5. What is the character of the business of said Commercial Bank of Scotland, Limited?

Interrogatory No. 6: What is the principal place of business of said Commercial Bank of Scotland, Limited? [59]

Interrogatory No. 7: Attach to your deposition a copy of the charter or articles of incorporation of said Commercial Bank of Scotland, Limited, certified to be a true copy thereof by the officer who, under the laws of Scotland, has lawful custody thereof, with the seal of his office annexed, if such officer have a seal.

Interrogatory No. 8: What is and was the citizenship and residence of a majority of the stockholders of the Commercial Bank of Scotland, Limited, upon January 1, 1897, and from then continuously on?

Interrogatory No. 9: Are you acquainted with an account or accounts of the Commercial Bank of Scotland, Limited, against Frank Waterhouse, Limited?

Interrogatory No. 10: State what, if any, disposition said Commercial Bank of Scotland, Limited, has made of said claim on account of said indebtedness and of the letter of guarantee of the said Frank Waterhouse described in the complaint herein.

Interrogatory No. 11: Your attention is called to what purports to be a written assignation of said claim and said letter of guarantee which is in the possession of James Gill, which said assignation purports to assign to said John Gill said letter of guarantee granted by Frank Waterhouse, together

with the claim of said Commercial Bank of Scotland, Limited, against said Frank Waterhouse under said letter of guarantee, which said assignation bears date October 8, 1907, and purports to be signed by N. B. Gunn and Thomas W. Tod, [60] directors, and Alex Bogie, manager, of said Commercial Bank of Scotland, Limited. Please observe the signatures attached to said assignation and state whether or not you recognize and can identify each of said signatures to said instrument as being the true signatures of the individuals they purport to be.

Interrogatory No. 12. State whether or not at the time said assignation purports to have been executed, the said N. B. Gunn and Thomas W. Tod were duly qualified and acting directors, and the said Alex Bogie was the duly qualified and acting manager, of the Commercial Bank of Scotland, Limited.

Interrogatory No. 13: State whether or not at said time the said N. B. Gunn and Thomas W. Tod, as directors, and the said Alex Bogie, as manager, were duly authorized to execute said assignation on behalf of said Commercial Bank of Scotland, Limited.

Interrogatory No. 14: State whether or not a letter was written by you for the Commercial Bank of Scotland, Limited, to Frank Waterhouse, relative to the account or accounts of Frank Waterhouse, Limited, on or about October 31, 1906.

Interrogatory No. 15: If you answer "yea" to the foregoing interrogatory, please attach a copy of said letter to your deposition.

Interrogatory No. 16: Please state any other matter or thing material to the issues herein which occurs to you and concerning which you have not been interrogated by the foregoing interrogatories.

HUGHES, McMICKEN, DOVELL & RAMSEY,

Attorneys for Plaintiff. [61]

[Title of Court and Cause.]

**Cross-Interrogatories to be Propounded to James
Lawson Anderson, on Behalf of Defendant.**

1. Cross-Interrogatory No. 1:

If in answer to direct interrogatories, you have stated the citizenship and residence of a majority of the stockholders of the Commercial Bank of Scotland, Ltd., on January 1, 1907, to the present date, please state whether Alexander McNab was during said period, or any part thereof, a stockholder in said bank, and if so, what amount of stock he held.

2. Cross-Interrogatory No. 2:

If in answer to direct interrogatory No. 10, you have stated that the bank made any disposition of the indebtedness and letter of guaranty therein mentioned, state whether such disposition was made by written instruments. Did the bank hold any letter or letters of guaranty of this indebtedness, or any part thereof, from Alexander McNab, I. McNab, R. B. Archibald, Marshall, McEwen & Co. or John M. Mitchell? [62] If so state fully and in detail what disposition was made of said letters of guaranty. If any of them have been assigned or trans-

ferred by the bank, state to whom, and when they were so transferred, and for what consideration. If any of them have been released by the bank, state when and for what consideration. If any of said guarantors have died since the execution of such guaranties, state which of them are dead and when they died, and also state whether the bank made or filed any claim against their estates on account of such letter or letters of guaranty. If not, why not? If no such claim was made or filed, were such estates released from liability to the bank?

3. Cross-Interrogatory No. 3:

If you have stated in answer to direct interrogatory No. 10 that the letter of guaranty of Frank Waterhouse, defendant, was assigned to plaintiff, John Gill, please state at whose instance and request such assignment was made. Who first made the suggestion to the bank that said letter of guaranty should be so assigned or transferred? Was Alexander McNab a party to such negotiations or present in person or by representative at any time in connection therewith?

4. Cross-Interrogatory No. 4:

If you have stated that the bank assigned the letter of guaranty of the defendant, Frank Waterhouse, to John Gill, state what consideration was paid to the bank by John Gill therefor. Was such consideration paid in cash, or by check or checks, bill or bills, note or notes? If by check, bill or note, give the dates thereof, and the names of all parties appearing thereon. [63]

5. Cross-Interrogatory No. 5:

Did you personally participate in the negotiations leading up to the execution of this assignment to the plaintiff, John Gill? If so, state whether there was any understanding, agreement or contract written or verbal between the defendant, John Gill and Alexander McNab, or between the bank and McNab, or between Gill and McNab, to the effect or in substance that Gill was acting for or in the interest of Alexander McNab in taking an assignment of this letter of guaranty of the defendant, or under or by which McNab was to repay to said John Gill any moneys advanced by Gill on account thereof, or by which McNab was to receive the benefit, directly or indirectly, of any collections that might be made from the defendant Waterhouse thereon. If any such understanding, agreement or contract existed, please state the same fully according to your best knowledge and recollection.

6. Cross-Interrogatory No. 6:

Did Alexander McNab either before, at the time of, or subsequent to the execution of said assignment by the bank to John Gill of the letter of guaranty of defendant Waterhouse, pay either to the bank or to Gill any part of the consideration received by the bank for such assignment, or give any note or bill therefor? If you state that there was no such understanding, agreement or contract between the bank or McNab and Gill, please explain what interest Gill had in the purchase of the letter of guaranty of the defendant Waterhouse, and why he did not at the same time purchase or acquire the

other letters of guaranty executed to the bank to secure the payment of the indebtedness of Frank Waterhouse, Ltd. [64]

7. Cross-Interrogatory No. 7;

If you have stated in answer to the previous cross-interrogatories that the bank has not disposed of or released the letters of guaranty of Alexander McNab, I. McNab, R. B. Archibald, Marshall, McEwen & Company and J. M. or John M. Mitchell for payment of the indebtedness of Frank Waterhouse, Ltd., please state whether the bank still holds said letters of guaranty to secure said indebtedness.

8. Cross-Interrogatory No. 8:

Was the Commercial Bank of Scotland, Ltd., notified of the execution of a memorandum of agreement between the defendant, Frank Waterhouse, and Frank Waterhouse, Ltd., by and through J. M. Mitchell and William McEwen, on or about October 6, 1900? Did the bank receive from Frank Waterhouse, Ltd., or from any of its officers or directors, the bonds executed by Frank Waterhouse & Company, pursuant to the terms of said memorandum agreement? Did the bank make any advances to Frank Waterhouse, Ltd., after the date of said agreement of October, 1900? Did not the bank know that Frank Waterhouse, Ltd., had ceased active business on or about that date?

9. Cross-Interrogatory No. 9:

If in answer to direct interrogatory No. 14, you state that a letter was written by you for the Commercial Bank of Scotland, Ltd., to the defendant, Frank Waterhouse, relative to the account of Frank

Waterhouse, Ltd., on or about October 31, 1906, state whether or not any requests or demands were made by the bank on Frank Waterhouse, Ltd., or on any of its officers or directors, for payment of the indebtedness of Frank Waterhouse, Ltd., between the opening of said account [65] in the year 1898, and the writing of said letter of October 31, 1906. If you have stated that you wrote a letter on the date referred to, to the defendant, Frank Waterhouse, state whether at that or any other time, the bank made a demand upon any of the other guarantors of the indebtedness of Frank Waterhouse, Ltd., for payment thereof. If so, state when and upon whom such demand was made. If you say that no such demand was made, please explain why the bank made a demand upon the defendant Waterhouse, under his letter of guaranty, and did not make a similar demand upon the other guarantors of the indebtedness. Also please state at whose instance and request the letter of October 31, 1906, was written by you. Was Alexander McNab a customer of the bank between the years 1898 and 1906? Was he not reputed to be a man of large wealth and a large property owner? Where did he reside, in what business was he engaged? Were all of the guarantors of the indebtedness to Frank Waterhouse, Ltd., except the defendant Waterhouse, residents of and engaged in business in England or Scotland?

HAROLD PRESTON and

BOGLE, GRAVES, MERRITT & BOGLE,

Attorneys for Defendant. [66]

[Title of Court and Cause.]

**Interrogatories to be Propounded to William
McEwen, Electra House, Finsbury Pavement,
London, England, on Behalf of Plaintiff.**

Interrogatory No. 1: State your name, age, residence and occupation.

Interrogatory No. 2: Are you acquainted with a corporation named Frank Waterhouse, Limited, and if so, please state what, if any, official connection you have or have had with such corporation.

Interrogatory No. 3: Please attach to your deposition a copy of the charter or articles of incorporation of said Frank Waterhouse, Limited, certified to be a true copy thereof by the officer who, under the laws of Scotland or Great Britain, has lawful custody thereof, with the seal of his office annexed, if such officer have a seal.

Interrogatory No. 4: Between the 18th day of March, 1898, and the 31st day of October, 1903, who were the directors and who the secretary of Frank Waterhouse, Limited? [67]

Interrogatory No. 5: Please examine a copy of the account or accounts of Frank Waterhouse, Limited, with The Commercial Bank of Scotland, Limited, which is attached to the deposition of James Robb, and state whether or not said account correctly sets forth amounts advanced to said Frank Waterhouse, Limited.

Interrogatory No. 6: State whether or not said copy of account or accounts correctly shows the manner and the amounts in which said account or

accounts of Frank Waterhouse, Limited, were operated upon by cheques, drafts, bills, promissory notes or other obligations.

Interrogatory No. 7: State whether or not the amounts shown by said copy of account or accounts to have been paid out for the benefit of said Frank Waterhouse, Limited, were actually so paid.

Interrogatory No. 8: If you have in your possession, or if there is in the possession of Frank Waterhouse, Limited, any cheques, drafts, bills, promissory notes or other obligations which operated on said account or accounts of Frank Waterhouse, Limited, please attach the originals thereof to your deposition.

Interrogatory No. 9: At whose instance and request were advances shown by the copy of said account or accounts to have been made to Frank Waterhouse, Limited, made?

Interrogatory No. 10. Please state in detail what, if any, demand or demands have been made for the payment of the [68] indebtedness shown by said copy of account or accounts.

Interrogatory No. 11: Please state in detail what, if any, payments have been made on said account or accounts since October 31, 1903.

Interrogatory No. 12. Please state any other matter or thing material to the issues herein which occurs to you and concerning which you have not been interrogated by the foregoing interrogatories.

HUGHES, McMICKEN, DOVELL & RAMSEY,

Attorneys for Plaintiff. [69]

[Title of Court and Cause.]

**Cross-interrogatories to be Propounded to William
McEwen on Behalf of the Defendant.**

Cross-Interrogatory 1:

When was the corporation of Frank Waterhouse, Limited, organized? Who were its original incorporators and shareholders? State what changes were made in the shareholders between the time of the organization of the company and January 1, 1903.

Cross-Interrogatory 2:

In what business was the company engaged? Where was its business conducted?

Cross-Interrogatory 3:

When did you become secretary of the company? What relation, if any, did you have to the company prior to the time you became its secretary? Did you have any business connection or relations with Alexander McNab at the time you became [70] secretary of this company? If so, what were such connections or relations? What business relations have you had with him since this company went out of business?

Cross-Interrogatory 4:

When did Frank Waterhouse, Limited, discontinue active business operations?

Cross-Interrogatory 5:

Are you the William McEwen who on October 6, 1900, in connection with one John M. Mitchell, executed on behalf of the company the memorandum of agreement, copy of which is attached hereto

marked Exhibit "A"? By whom were you authorized to enter into said memorandum of agreement on behalf of the company?

Cross-Interrogatory 6:

Did said Frank Waterhouse, Limited, withdraw from, and cease to do and carry on any active business operations immediately after the sale and transfer of its property and assets as stipulated in this memorandum of agreement?

Cross-Interrogatory 7:

What was the indebtedness of Frank Waterhouse, Limited, to the Commercial Bank of Scotland, Limited, on October 6, 1900?

Cross-Interrogatory 8:

Was the Commercial Bank of Scotland, Limited, notified by you or by any of the other directors of Frank Waterhouse, Limited, so far as you know, of the terms of this memorandum [71] of agreement executed by you and Mr. Mitchell on behalf of the company? Was Mr. Alexander McNab informed of the contents of this agreement by you or Mr. Mitchell? If so, when? Were the terms of this agreement submitted by you to Mr. McNab by cable or otherwise prior to or at about the time of its execution?

Cross-Interrogatory 9:

If you state in answer to the last cross-interrogatory that the Commercial Bank of Scotland, Limited, was not notified of the memorandum of agreement above mentioned, please state whether this information was withheld from the bank purposely

or by inadvertence. If withheld purposely, please explain why.

Cross-Interrogatory 10:

How many separate accounts did Frank Waterhouse, Limited, carry with the Commercial Bank of Scotland, Limited? Was there one account called the "Loan Account" for 15,000 pounds, and another account called "No. 2 Account" for 5,000 pounds, and a general account?

Cross-Interrogatory 11:

Was not the loan account for 15,000 pounds secured by separate guaranties in the same form executed severally by A. McNab, I. McNab, R. B. Archibald, Marshall McEwen & Company, Frank Waterhouse and J. M. Mitchell?

Cross-Interrogatory 12:

Was not No. 2 Account for 5,000 pounds secured by separate guaranties executed severally by A. McNab, I. McNab, [72] R. B. Archibald and Frank Waterhouse?

Cross-Interrogatory 13:

Was not the general account secured by separate guaranties executed severally by A. McNab and J. M. Mitchell?

Cross-Interrogatory 14:

If in answer to direct interrogatory No. 9 you have stated at whose instance and request the advances shown by the account or accounts were made to Frank Waterhouse, Limited, please state which of said advances, if any, were made subsequent to the execution of the memorandum of agreement above mentioned, to wit, October 6, 1900, and at whose re-

quest such advances were made.

Cross-Interrogatory 15:

What has become of the several guaranties of the Indebtedness of Frank Waterhouse, Limited, given to the bank by A. McNab, I. McNab, R. B. Archibald, J. M. Mitchell and Marshall McEwen & Company? If any of these guarantors have been released from their guaranty, state which of them have been so released, and when they were so released. If any of these guaranties have been assigned or transferred by the bank, to your knowledge, state which of them have been so assigned or transferred, when and to whom.

HAROLD PRESTON and

BOGLE, GRAVES, MERRITT & BOGLE,

Attorneys for Defendant. [73]

[Title of Court and Cause.]

Interrogatories to be Propounded to William Bamford Laing, of Glasgow, Scotland, on Behalf of Plaintiff.

Interrogatory No. 1: State your name, age, residence and occupation.

Interrogatory No. 2: Are you acquainted with the Commercial Bank of Scotland, Limited?

Interrogatory No. 3: Have you, or have you had in the past, any connection with the Commercial Bank of Scotland, Limited, either at Glasgow or London, and if so, state what, if any, official position you held or have held.

Interrogatory No. 4: Are you acquainted with

an account or accounts of Frank Waterhouse, Limited, standing upon the books of the Commercial Bank of Scotland, Limited?

Interrogatory No. 5. By whom were said account or accounts kept? [74]

Interrogatory No. 6: If you answer that said account or accounts were kept by yourself or under your direction, please state whether or not said account or accounts were kept upon the regular books of The Commercial Bank of Scotland, Limited, and whether or not the entries appearing in said account or accounts were made in the regular course of business of said bank.

Interrogatory No. 7: Please examine the copy of said account attached to the deposition of James Robb and state whether or not the same is a full, true and correct copy of the account or accounts of Frank Waterhouse, Limited, kept by you or under your direction in the regular course of business of said bank.

Interrogatory No. 8: Between the 18th day of March, 1898, and the 31st day of October, 1903, what, if any, amounts were advanced by the Commercial Bank of Scotland, Limited, to Frank Waterhouse, Limited?

Interrogatory No. 9: In what way were these amounts advanced?

Interrogatory No. 10: If you answer that amounts were deposited to the account or accounts of Frank Waterhouse, Limited, state whether or not the dates and amounts such deposits were made are correctly shown upon the transcript of account at-

tached to the deposition of the said James Robb.

Interrogatory No. 11: If you state that amounts were deposited to the account or accounts of Frank Waterhouse, [75] Limited, state how these accounts were operated on for Frank Waterhouse, Limited, whether by cheques or drafts or bills or promissory notes or otherwise.

Interrogatory No. 12: If you answer said account or accounts were operated on by cheques or drafts or bills or promissory notes or otherwise, by whom were said obligations signed?

Interrogatory No. 13: If you answer said account or accounts were operated on by cheques or drafts or bills or promissory notes or other obligations, what has become of the originals of said cheques or drafts or bills or promissory notes or other obligations?

Interrogatory No. 14: If you have in your possession the originals of any of said cheques, drafts, bills, promissory notes or other obligations which operated on the account or accounts of Frank Waterhouse, Limited, advanced by the Commercial Bank of Scotland, Limited, attach such originals to your deposition.

Interrogatory No. 15: State whether or not the payments shown by said account or accounts were actually made on cheques, drafts, bills, promissory notes or other obligations as shown by said account or accounts.

Interrogatory No. 16: State at whose request the advances made to the account or accounts of Frank Waterhouse, Limited, by the Commercial Bank of

Scotland, Limited, as aforesaid, were made. [76]

Interrogatory No. 17: State whether or not at periods between May 7, 1898, and October 31, 1903, statements showing interest upon said account or accounts of Frank Waterhouse, Limited, were rendered the said Frank Waterhouse, Limited, or the said Frank Waterhouse, and if so, when.

Interrogatory No. 18: If you answer that said statements were rendered, state where the originals thereof are, if you know.

Interrogatory No. 19: State whether or not such statements were assented to as rendered.

Interrogatory No. 20: Please state any other matter or thing material to the issues herein which occurs to you and concerning which you have not been interrogated by the foregoing interrogatories:

HUGHES, McMICKEN, DOVELL & RAMSEY,

Attorneys for Plaintiff. [77]

[Title of Court and Cause.]

Cross-interrogatories to be Propounded to William Bamford Laing, on Behalf of Defendant.

Cross-Interrogatory 1:

If you have stated in answer to direct interrogatory No. 3 that you have any official connection with the Commercial Bank of Scotland, Limited, please state what that connection is and what your connection has been with the bank since March 18, 1898.

Cross-Interrogatory 2:

If you have stated in answer to direct interrogatories that any amount or amounts were advanced by

the bank to Frank Waterhouse, Limited, are your statements in that respect based upon personal knowledge of such advances, or merely upon entries you find upon the books of the bank?

Cross-Interrogatory 3.

Was Alexander McNab a customer of the bank at the time the account with Frank Waterhouse, Limited, was opened by the bank? Has he been a customer of the bank from that date to [78] the present? If not, when did he cease to be such customer?

Cross-Interrogatory 4.

If you have stated that Alexander McNab was a customer of the bank, please state whether or not the advances made Frank Waterhouse, Limited, were primarily made upon the credit of Alexander McNab? What security in the form of guaranties, pledges or otherwise, were taken by the bank at the time of the opening of the account with Frank Waterhouse, Limited, or at any subsequent date, to secure the payment of advances made Frank Waterhouse, Limited? Please state fully and in detail.

Cross-Interrogatory 5.

Were the advances made by the bank to Frank Waterhouse, Limited, made under one general account or under separate and distinct accounts? If under separate and distinct accounts, please state whether one of these accounts was known as the "Loan Account" for 15,000 pounds, and another known as "account No. 2" for 5,000 pounds, and the other known as a "General Account"?

Cross-Interrogatory 6.

Did the bank receive from Alexander McNab any

security or guaranty of payment of the indebtedness of Frank Waterhouse, Limited, and did it also receive any security or guaranty of payment of said indebtedness from I. McNab, R. B. Archibald, Marshall McEwen & Company, and J. M. Mitchell, or either of them? If you answer that such security or guaranties were received by the bank, please state fully what securities or guaranties were received for the indebtedness shown by each of said accounts, when such security or guaranties [79] were received by the bank.

Cross-Interrogatory 7.

If you have stated that securities or guaranties were given to the bank for the indebtedness of Frank Waterhouse, Limited, by Alexander McNab, I. McNab, R. B. Archibald, Marshall McEwen & Company, and J. M. Mitchell, or either of them, please state the residence of each of the persons so giving such security or guaranties, the business or occupation of each of such persons and their place of business.

Cross-Interrogatory 8.

If you have stated that R. B. Archibald gave such security or guaranty to the bank, please state whether he is now living or dead? If dead, when did he die, and where was his estate located? Did the bank make or file any claim against his estate on such guaranty or guaranties? If not, please explain why such claim was not made or filed against the estate? If he or his estate was at any time released by the bank, please explain fully when it was so released, and why?

Cross-Interrogatory 9.

If you have stated that I. McNab gave any security or guaranty to the bank for the indebtedness of Frank Waterhouse, Limited, or any part of it, please state whether he is living or dead. If dead, state when he died and where his estate was located and administered. Was he or his estate released from such security or guaranty by any action of the bank or by failure to file claim against his estate? If so, explain fully why he was so released. [80]

Cross-Interrogatory 10.

If you have stated that J. M. Mitchell gave any security or guaranty to the bank for the indebtedness of Frank Waterhouse, Limited, please state whether he has been released from such guaranty or guaranties, and if so, why.

Cross-Interrogatory 11.

If you have stated that Alexander McNab and Marshall McEwen & Company, either or both, gave any security or guaranties to the bank for the indebtedness of Frank Waterhouse, Limited, state whether either of them were or have been released therefrom. If so, how and why. Please state in what business Marshall McEwen & Company are engaged and where. Please state in what business Alexander McNab is engaged and where. Is he not reputed to be a man of great wealth and large property?

Cross-Interrogatory 12.

If you have stated that you had any connection with the bank during the year 1900, please state whether the bank was in any way informed of the execution of a memorandum of agreement between the defendant Frank Waterhouse, of the one part,

and Frank Waterhouse, Limited, acting by William McEwen and John M. Mitchell, of the other part, dated October, 1900, and a copy of which is attached to the interrogatories herein addressed to William McEwen. Was the bank notified that pursuant to this agreement, Frank Waterhouse, Limited, conveyed its property to Frank Waterhouse & Company, a corporation organized by the defendant pursuant to said agreement? Did the bank at any time receive the bonds issued by Frank Waterhouse & Company, pursuant to such agreement? [81]

Cross-Interrogatory 13.

Were any advances made by the bank to Frank Waterhouse, Limited, subsequent to this agreement of October, 1900? If so, at whose instance and request?

Cross-Interrogatory 14.

If in answer to direct interrogatory 20 you have stated that the bank assigned and transferred its claim against the defendant Frank Waterhouse under his letter of guaranty, please state whether this was done at the instance of Alexander McNab. Please state what money was received by the bank for such assignment, from whom it was received and in what form, whether in cash, by check, notes or bills. If by checks, notes or bills, describe fully, giving all names appearing thereon. Please attach to your deposition an exact copy of all entries upon any of the books of the bank relating to this transfer and assignment, or to the payment made therefor, including any entries incident thereto appearing upon the ledger, cash books, day books, bills receiv-

able books, and upon any account or accounts of Alexander McNab, and upon any other books of the bank.

Cross-Interrogatory 15.

If in answer to direct interrogatory 20, you have stated that the bank transferred a letter of guaranty of defendant Frank Waterhouse to the plaintiff John Gill, state what disposition was made by the bank of the letters of guaranty of Alexander McNab, I. McNab, R. B. Archibald, Marshall McEwen & Company, and J. M. Mitchell, and each of them. If these letters of guaranty were also transferred and assigned by the bank, state to whom they were so transferred and assigned, [82] when and for what consideration, and at whose instance and request. If you state that these letters of guaranty were not transferred or assigned by the bank, state what disposition was made of them by the bank.

Cross-Interrogatory 16.

What relation, if any, did the plaintiff, John Gill, bear to the Commercial Bank of Scotland, Limited, from the year 1898 to the time of his death?

HAROLD PRESTON,

BOGLE, GRAVES, MERRITT & BOGLE,

Attorneys for Deft. [83]

**Exhibit "A"—Warrant for the Charter of the
Commercial Bank of Scotland.**

OUR SOVEREIGN LORD, considering that a humble Petition has been presented to His Majesty by and on behalf of the Right Honourable John Lord Rollo; Donald M'Leod, Esquire of Geanies;

Lieutenant-Colonel Charles Macquarie, residing at Ulva, in the county of Argyle; Robert Stodart, Esquire, Queen Street, Edinburgh; Colonel David Kinriard, of the Honourable East India Company's Service; James Erskine, Esquire of Aberdona; James Home, Esquire, Professor of the Practice of Physic in the University of Edinburgh; Colonel John Reid of Frankville, in the county of Ayr; John Borthwick Gilchrist, Esquire, of London; Henry Dunlop, Esquire, Merchant, Glasgow; Alexander Gordon, Esquire of Bishopsteignton; William Murray, Esquire of Westfield; Doctor Patrick Baron Seton of Preston; John Cheape, Esquire of Girgenti; Sir James Robert Grant, Knight; Charles Husband, Esquire of Glenearn,—Extraordinary Directors of the Commercial Banking Company of Scotland; Forrest Alexander, Esquire, Merchant in Edinburgh; John Anderson of Gladswood; David George Sandeman, Esquire of Springland; Robert Scott, Esquire, Druggist in Edinburgh; James Wyld, Esquire of Gileton; William Macdonald, Esquire of Powderhall; Alexander Munro, Esquire, residing Princes Street, Edinburgh; John Bradfute, Esquire, Bookseller in Edinburgh; Walter Brown, Esquire, Merchant in Edinburgh; Henry Vansittart White, Esquire, Princes Street, Edinburgh; William Henderson, Esquire, Merchant in Edinburgh; Archibald Anderson, Esquire, Bruntefield Place, Edinburgh; William Laing, Esquire, Bookseller in Edinburgh, William Ellis, Esquire, Solicitor before the Supreme [84] Courts of Scotland, Edinburgh; and Alexander Clapperton, Esquire, Merchant in Edinburgh,—Ordinary direc-

tors of the said company; and Alexander Macartney, Esquire, Manager for the said company: Which Petition represents, That the Petitioners, and many other persons residing in that part of His Majesty's dominions called Scotland, had formed themselves into a Society or Partnership, and established the same in the said city of Edinburgh, under the name of the Commercial Banking Company of Scotland, for carrying on the business of Banking in all its branches, had subscribed and raised amongst themselves a large capital, in transferable shares: That the public had greatly benefited by the formation of their Society, and that a considerable revenue was derived to His Majesty therefrom: That it would greatly tend to the benefit and good management of the concerns of the said Company, established by the Petitioners and others as above written, if His Majesty would be graciously pleased to grant to the said Company a Royal Charter of Incorporation; and therefore, the Petitioners humbly prayed, that His Majesty would be graciously pleased to grant to the said Company a Royal Charter, for incorporating them, and such persons as might be thereafter duly admitted Members of the said Society, into one Body Corporate and Politic, by the name and style of the Commercial Bank of Scotland, with a perpetual endurance and succession, and with power to hold heritable property, and such other powers and privileges as are usually granted to other Bodies Corporate and Politic of the same nature, and in such manner as to His Majesty in his royal wisdom should seem proper. And His Majesty having taken the said Petition into his Royal consideration, and being

willing to give all proper encouragement to an establishment [85] calculated to be beneficial to the Public, and which had carried on business, with advantage to the country, since the year 1810: THEREFORE, and in compliance with the humble Petition above mentioned, and having regard to the circumstances already mentioned, particularly that the said Company has existed and carried on business for so many years, and was the first which, after the lapse of upwards of half a century, had been established on the principles of a Joint Stock Society, extending over the whole of Scotland,—during which period the agriculture, manufactures, and commerce of the country had greatly improved and increased, and a new institution of the kind became thereby useful and necessary: And farther, that the said Company had rendered useful service to the country and government, in receiving and remitting the Public Revenue: His Majesty, by virtue of his Prerogative Royal, and of his special grace, certain knowledge, and mere motion, Ordains a Charter to be made out, and passed under the Seal appointed by the Treaty of Union to be kept and used in Scotland, in place of the Great Seal thereof formerly used there,—Constituting, Erecting, and Incorporating, as His Majesty, for himself and his Royal Successors, hereby CONSTITUTES, ERECTS, AND INCORPORATES the said Petitioners, and such other person or persons as are now or shall hereafter become Members of the Society or Company, into one Body Politic and Corporate, by the name and style of THE COMMERCIAL BANK OF SCOTLAND, for the purpose of carrying on the business of Banking, in all

its branches: And, as such, and by such name, and for such purposes only, to have perpetual endurance and succession; with powers to the said Society and Corporation, under the name and style aforesaid, to take, hold, and enjoy such lands, tenements, or other heritages, as may be necessary [86] or useful in carrying on their said Trade or Business; and, if necessary, to sell, dispose, and convey the same; and to lend Money upon heritable and personal Securities; and to hold goods, effects, and chattels, for the uses and purposes of the said Society and Corporation, as hereby defined: Declaring, that all Charters, Dispositions, heritable Securities, and other Deeds or Instruments affecting heritable or personal Property, to be granted to the said Society and Corporation, shall and may be taken to them, under the fore-said Corporate name of The Commercial Bank of Scotland; and that any Charters, Dispositions, or other Deeds or Instruments to be granted by the said Society and Corporation, shall be subscribed by two or more of the Ordinary Directors, and by the Manager or Secretary for the time being, and to which the common Seal which the said Society or Corporation is authorized to use, as after mentioned, may be appended: And it is hereby declared, that all such Deeds or Instruments shall be equally valid and sufficient, as if the same had been subscribed by the whole Directors and Partners of the said Society or Corporation: And with power to the said Society or Corporation to sue and be sued, defend and be defended, plead and be impleaded, in whatever Courts and places, and before whatever Judges, Justices, or other Officers, in all actions, pleas, suits, complaints, matters and

things whatsoever, in such manner and form as any of His Majesty's subjects, or any other Body Corporate or Politic, may or can be; and to sue out and execute all manner of Diligence, real and personal, by the foresaid Corporate name of The Commercial Bank of Scotland, or in the name of the Manager for the time being: Declaring that a summons or citation in actions against the said Society or Corporation, given to their said Manager [87] or Secretary at the Society's Head Office, or other usual place of business in Edinburgh, shall be sufficient to oblige the said Society or Corporation to answer to any suit or process; and that all actions at the suit or instance of the said Society or Corporation may be brought and maintained in their said Corporate name, or in the name of the Manager for the time being; and with power to the said Society or Corporation to have and use a common Seal, and to change the same from time to time, as to the said Society or Corporation may seem expedient. And further, His Majesty doth hereby Ordain and Declare, that the Capital Stock of the said Corporation or Company of The Commercial Bank of Scotland is, and shall be, Three Millions Sterling, and to be held and disposed of in the manner mentioned in the Deed of Partnership of the said Company, bearing date the 31st day of October 1810, and several subsequent dates; the whole, or any part of which Capital Stock in addition to £600,000 already paid up, it shall and may be lawful for the Directors of the said Company for the time being, to call up and require payment of, pursuant to the said Deed of Partnership, at such time or

times, from time to time, and to such amount, as the said Directors for the time being shall order and direct in that behalf, pursuant to any Bye-Law which may be made in the manner herein directed. And His Majesty doth further Ordain and Declare, that the said Directors for the time being shall have power, and they are hereby empowered, to use and employ the Funds of the said Corporation, not only in the ordinary business of Banking, but also in purchasing or acquiring any of the Government Stocks or Securities, transferable at the Bank of England or Bank of Ireland, Exchequer Bills, or other Government Securities, of whatever nature the same may be; [88] any part of the Stock of the Bank of England or Bank of Ireland, or of any Incorporated Company, or any Bills of Exchange, Bullion, Gold, or Silver, and every other kind of personal Property, that may be acquired or purchased for behoof of the Proprietors of the said Commercial Bank of Scotland; and to sell, dispose of, or transfer all such government Stocks, and other securities or properties, as the said Commercial Bank of Scotland may acquire or be possessed of, in as full and ample manner as any Body Politic or Corporate, or any Company or individual whatever, in any part of His Majesty's dominions, may or can do. And His Majesty hereby Grants and Declares, that the present Extraordinary and Ordinary Directors of the said Society, as a Company, shall continue in office, and act as such respectively, until the Seventeenth day of December eighteen hundred and thirty-one years; upon which day, at Two o'clock in the

afternoon, there shall be held, in the Society's Head Office, in Edinburgh, a General Meeting of the Partners of Members of the said Society or Corporation; at which Meeting, and at the Meetings to be held annually upon the 17th day of December, if a lawful day, or the first lawful day thereafter, the Society or Corporation shall elect Extraordinary and Ordinary Directors, according to the Rules and Regulations now observed by the said Society, or according to any other Rules or Regulations which they may hereafter make by any Bye-Law in that behalf; And they shall also, at the said first Meeting or at any future Meeting, elect a Governor and Deputy-Governor, and shall do the same annually thereafter, upon the said 17th day of December, if a lawful day, or on the first lawful day following; which several Governors or Directors shall hold their offices respectively, and shall have full power to [89] manage, direct, order and appoint, in all matters and things touching and respecting the said Society, in terms of, and conform to, the Bye-Laws and Regulations of the said Society, in that behalf made, and now in observance, or hereafter to be made and provided. And further, His Majesty gives and grants to the said Society or Corporation, power and authority at their said annual General Meeting, or at any other General Meeting of the Members or Partners, called upon at least Thirty Days previous intimation, in the Edinburgh Evening Courant, Caledonian Mercury, and Edinburgh Advertiser; and in case of the discontinuance of these Newspapers, or any of them, by intimation in any

other three Newspapers, to be fixed by the Ordinary Directors for the time being,—to alter or annul any Bye-Laws, Rules, and Regulations of the said Society in observance, and to make and frame such other Bye-Laws, Rules, and Regulations, as the said Society of Corporation, or the major part of its Members assembled for the time, shall judge proper and necessary, for the better government and direction of the said Society or Corporation,—the votes of the said Members assembled at the said Meeting being taken in the manner provided by the Laws and Rules then in observance; and afterwards to alter or annul such Bye-Laws, Rules, and Regulations, from time to time, as the said Society or Corporation, or the major part of its Members assembled for the time, shall think fit and necessary,—but so always as the said Bye-Laws, Rules, and Regulations be no wise contrary to the Laws of the realm. And His Majesty further grants and confirms to the said Company or Corporation, all the Goods, sums of Money, Property, heritable and movable, real and personal, Rights, Profits, Benefits, Securities, Powers, Privileges, and others whatsoever, heretofore acquired and possessed, [90] enjoyed and exercised by the said Corporation, to be possessed, enjoyed, and exercised by them in all time coming, in manner at more length above specified: But declaring hereby, that nothing contained in these presents shall be construed as intended to limit the responsibility and liability of the individual Partners of the said Corporation for the debts and engagements lawfully contracted, or to be contracted, by the said Corporation,

—which responsibility and liability is to remain as valid and effectual, as if these presents had not been granted, any law or practice to the contrary notwithstanding: Providing and declaring always, that the said Society or Corporation shall be duly authorized, in virtue of the Charter to follow hereon, to carry on the business of Banking, in all its branches, and shall not be empowered, in virtue thereof, to carry on any other trade or business whatever; And further, providing and declaring that the said Company or Corporation shall render annually to the Lords Commissioners of His Majesty's Treasury, an account, certified by the Cashier, Secretary, or Accountant of the said Company, shewing the weekly amount of their Notes in circulation, of each denomination. And His Majesty further grants, by these presents, for himself, his heirs and successors, that the Charter to follow hereon, shall be in and by all things valid and effectual in law, according to the true intent and meaning of the same, and shall be held, and construed, and adjudged, in the most favourable and beneficial sense, for the best advantage of the said Corporation, notwithstanding any misrecital, defect, uncertainty, or imperfection therein contained. And His Majesty doth hereby, for himself, his heirs and successors, covenant, grant, and agree to and with the said Corporation or Body Politic, and their [91] successors, That he, his heirs and successors, shall and will from time to time, and at all times hereafter, upon the humble suit and request of the said Corporation or Body Politic, and their successors, give and grant unto them all such further and other privileges, au-

thorities, matters, and things, for rendering more effectual this his grant, according to the true intent and meaning of these presents, which he or they can or may lawfully grant, and as shall be reasonably advised and devised by the Council, learned in the law, of the said Corporation or Body Politic for the time being, and shall be approved of by the Lord Advocate or Solicitor-General for Scotland of His Majesty, his heir and successors, on his and their behalf. And His Majesty doth further will and command, that this Charter do pass the Seal appointed by the Treaty of Union to be kept and used in Scotland, in place of the Great Seal thereof formerly used there, without passing any other seal or register. For the doing whereof, as well to the Director of His Majesty's Chancery for writing the same, as to the Lord Keeper of the Seal, for causing the said Seal to be appended thereto, this shall be a sufficient Warrant. Given at His Majesty's Court at Saint James, the fifth day of August 1831, in the Second Year of His Majesty's Reign.

I certify that the foregoing is a true copy of the Warrant for the Royal Charter of the Commercial Bank of Scotland.

Given under my hand at Edinburgh this sixth day of February 1914.

(Signed) J. L. ANDERSON,
Secretary of said Bank. [92]

Plaintiff's Exhibit "C"—Copy of Letter from Commercial Bank of Scotland, Limited, Edinburgh, to Frank Waterhouse.

Copy of Letter from The Commercial Bank of Scotland, Limited, Edinburgh, to Frank Waterhouse, Shipping Agent, Seattle.

31st October 1906.

Dear Sir:

The Directors have resolved to call for payment of the advances to Frank Waterhouse Limited, Salisbury House, London, for which in respect of your letter of Guarantee, dated 16th Feby. 1899, you are responsible to the Bank. I have therefore to request you to make immediate payment of the sum due and relative interest. Annexed is a note of the sum due, with interest to date.

Yours faithfully,
(Signed) J. L. ANDERSON,
Secretary.

Note of sums due by Frank Waterhouse Limited within referred to.

		Interest from 31st Octr 1903 to 31st Octr 1906
Loan A/C	£15000	£2257 . 11 . 11
No I A/C	1151 . 17 . 9	169 . 14 . 10
No II A/C	3479 . 13 . 3	536 . 18 . 10
	<hr/>	<hr/>
	19631 . 11	2964 . 5 . 7
Add Interest	2964 . 5 . 7	
	<hr/>	<hr/>
	22595 . 16 . 7	[93]

**Plaintiff's Exhibit "D"—Assignment, Commercial
Bank of Scotland, Ltd., to John Gill.**

Stamps £5:18/-

We, THE COMMERCIAL BANK OF SCOTLAND LIMITED, incorporated by Royal Charter and Act of Parliament DO hereby for certain good and onerous causes and considerations ASSIGN TO JOHN GILL, Solicitor Supreme Courts, One hundred and twenty-eight George Street, Edinburgh, and his heirs, executors or assignees the Letter of Guarantee granted by Frank Waterhouse, sometime Merchant, Takoma, Washington, United States of America, now Shipping Agent, Seattle, United States of America, dated Sixteenth February Eighteen hundred and ninety-nine whereby the said Frank Waterhouse guaranteed payment to us of all sums for which Frank Waterhouse Limited sometime of One hundred and forty-seven Cannon Street, London, thereafter of Salisbury House there, whether on an account or accounts kept in their name in our books and operated on for them by cheques or drafts signed by two of their Directors and their Secretary all for the time or on Bills, Promissory Notes or other obligations were or might become liable to us but the amount for which he should be liable under the said Guarantee should not exceed Twenty-one thousand pounds Sterling with interest from the date or dates at which the said Frank Waterhouse Limited had become or should become indebted to us as the said Letter of Guarantee which contains sundry other clauses and provisions in itself more fully

bears, with all that has followed or is competent to follow thereon and our whole right, title and interest in and under the same AND SEEING that the sums due to us by the said Frank Waterhouse Limited which are covered by the said Letter of Guarantee to the extent of Twenty-one thousand pounds Sterling with interest as aforesaid amount to the sum of Twenty-two thousand eight hundred and ninety-seven pounds sixteen shillings and [94] fivepence Sterling as at Fifteenth February Nineteen hundred and seven, conform to certified copies of three Accounts annexed hereto, WE hereby ASSIGN to the said John Gill and his foresaid our claim to the said sums with interest as aforesaid against the said Frank Waterhouse to the extent of Twenty-one thousand pounds Sterling and interest thereon from Thirty first October Nineteen hundred and three due to us by the said Frank Waterhouse under the said Letter of Guarantee, with all our right, title and interest in and to the premises to the extent aforesaid, with power to them to ask, crave, sue for and uplift the said sums of principal to the extent aforesaid with interest thereon as aforesaid hereby assigned, and upon payment to grant discharges or conveyances thereof to the extent aforesaid either in whole or in part and generally to do everything in the premises that we might have done before granting hereof: PROVIDED ALWAYS that it shall not be competent to the said John Gill or his foresaids to use our name or instance in any action or steps of procedure to follow hereon: IN WITNESS WHEREOF, these presents are subscribed

for and on behalf of us, the said Commercial Bank of Scotland, Limited, by Neil Ballingall Gunn and Thomas Wardie Tod two of our Ordinary Directors and by Alexander Bogie our Manager, all at Edinburgh, on the Eighth day of October Nineteen hundred and seven, before these witnesses Ernest Edward Leigh Hardinge and George McKenzie, both Clerks in our Head Office there.

N. B. GUNN,
Director.

THOMAS W. TOD,
Director.

ALEX. BOGIE,
Manager.

E. E. L. HARDINGE,
Witness.

GEO. McKENZIE,
Witness. [95]

Plaintiff's Exhibit "D"—Account of Frank Waterhouse, Ltd., with Commercial Bank of Scotland, Ltd.

MESSRS. FRANK WATERHOUSE LIMITED

In Account with COMMERCIAL BANK OF SCOTLAND LIMITED,
LONDON.

GENERAL A/C.

1898.			Dr.			Cr.		
Mch.	18	By Loan				1000		
	19	To Cash	649					
		By				1500		
	21	To	1205	9	3			
	22	By				1000		
		To	1000					
		" Stps. & Fee on						
		Guarantee	1		6			
		" Chq. Bk		4	2			
	25	"	500					
		By				2000		
	26	To	152	8	1			
	31	By				2000		
Apl.	1	To	51	16				
		"	509	7				
		"	68	8	7			
		"	333	2	11			
	2	"	6	15	3			
		"	37	13	8			
		"	237	2	4			
		"	1000					
		"	83	11	4			
	4	"	1	18	6			
		"	150					
		"	2	4				
		"	1	6	6			
	5	"	38	13				
		"	45	5	6			
	6	"	7	10	6			
		"	9	3	11			
		By				1000		
			6092	1	.	8500		

1898.			Dr.			Cr.		
			6092	1		8500		
April	7	To Cash	1000					
		"	50					
	9	"	1302	12	8			
		"	330	11	10			
	12	By				1000		
	13	To	65					
		"	9	9				
	14	"	500					
		"	17		8			
		"	2	10				
		By				1398	19	7
	15	To	69	7	10			
		"	11	2				
		By				3500		
		To	2000					
	16	By				250		
	18	To	1500					
		By				1000		
	21	To	1000					
	28	By				250		
		To		2	6			
	30	By				2500		
		To	4000					
		By				350		
		To. Com:	1	5				
May	3	" Cable Message		9				
	4	"	493	1	6			
	7	" Loan Interest	62	5	2			
	10	By				900		
	10	To	1025					
	10	" Com.		9				
	12	" Cost of Cable		9				
	16	"	45					
			19577	16	2	19648	19	7

1898.		Dr.			Cr.		
		19577	16	2	19648	19	7
May	20	By Cash			1600		
		To Com.	16				
June	1	" Stamps & Fee	11				
	2	"	42				
	3	" Chq. Bk.	4	2			
	10	"	88	11			
		"	7	9			
	11	"	225				
	18	By				7	
	20	To Com. on £5000					
		at 5%		12	10		
	24	"	5000				
		By			5000		
	25	To	20	16	8		
July	5	"	897	3	7		
	11	"	371	5			
		By			100		
		"			33	8	
Aug.	17	To Stamp		6			
Sep.	2	"	400				
	8	By			1000		
	9	To	2	19	6		
		"	20				
		"	50				
		"	100				
	10	"		17	6		
		" Loan Interest	166	8	4		
	12	" Stps. on Guarantee	1		6		
	17	"	20	4	1		
	19	"	2	1	9		
		"	132	12	6		
	21	"	48	12	6		
Oct.	4	"	5				
		By			200		
		27193	19	9	27582	14	7

1898.			Dr.			Cr.		
			27193	19	9	27582	14	7
Oct.	6	To Cash	266	9	6			
		By				450		
	18	To	400	17	5			
	29	" Cable		12				
		" Com.	12	10				
	31	" Interest		17	4			
		" Interest No. 2 a/c	86	11	7			
		" Interest on Loan	166	2	9			
		By Balance				95	5	9
			<hr/>			<hr/>		
			£28128	4		28128		4
			<hr/>			<hr/>		

1898								
Oct.	31	To Balance	95	5	9			
Nov.	12	To Cash	37	10				
	14	By Debit for Com. on						
		29th Oct. reversed				12	10	
	16	To	10					
	29	"	15					
Dec.	1	"	2	3	3			
	19	"	44	11	9			
	20	"	399	12	6			
	22	"	18	17	8			
		"	105					
	24	By				3000		
		To	3000					
		" Com.	1	10				
1899		" Telegram		16				
Jany.	14	" Stamp			6			
	17	" Cablegram	1	14				
	23	By				1000		
		To Com.		10				
	24	"	1098	4	3			
Feb.	4	" Com. on Dexter						
		& Co.	10					
			<hr/>			<hr/>		
			4840	15	8	4012	10	

1899		Dr.			Cr.		
		4840	15	8	4012	10	
Feb.	4	To Cash Loan Interest	197	5	3		
	6	By			4979	3	4
		To	4979	3	4		
	18	" Cablegram	1	15			
		By			150		
		To	150				
	20	" Stamps & Fee		6			
	25	By			4000		
Mch.	1	To	12	19	10		
		"	62	10			
	2	By			2150		
		To	3950				
	3	" Com.	1	1	6		
		"	21	3	4		
	4	" Cable		14			
		" Dft. Dexter	2000				
	6	" Com. on "	5				
		" " to Melville					
		F. & Co.	7	10			
	13	By			1500		
		To	1500				
	15	" Com.		15			
	17	" Cable		14			
		"	15				
	18	"	2	19	8		
	20	" Chq. Bk.		8	4		
	23		50				
April	4	By			1500		
		To Acceptor	1500				
		Com.	3	15			
		19303	10	5	18291	13	4

1899		Dr.			Cr.		
		19303	10	5	18291	13	4
April	4	To Cash Com.	15				
	28	"	3	7	10		
		By			30		
May	4	To	30				
	6	" Loan Interest	186	19	9		
	14	" Cable	1	15			
June	30	By			19	10	10
		To Com.	5				
Aug.	28	" Acceptee	1000				
		" Com.	2	10			
	31	" "		10			
		By			1000		
Oct.	30	To Loan Interest	365	15			
	31	" This account					
		Interest	48	4	6		
		" Interest on					
		No. 2 a/c.	259	3	7		
		By Balance			1866	6	11
		£21207	11	1	21207	11	1

1899							
Oct.	31	To Balance	1866	6	11		
Nov.	1	By Cash				2000	
	2	To Stps.				1	
		"	85	3	8		
		"	75				
		"	400				
	4	"	400				
1900							
Jany.	13	"	17	7	9		
	19	By				21	6
		To	63	18			
	20	"	21	16	4		
	29	"	5	15			
Feb.	17	By				3000	
		2935	7	9	5021	6	

1900			Dr.			Cr.		
			2935	7	9	5021	6	
Feb.	20	To Cash	125					
	21	"	4		6			
	22	"	1	15				
		"	21	5				
		"	1000					
		"	50					
	23	"	1000					
	26	" Loan Interest	221	14	4			
Mch.	9	By				2000		
	12	To	1054	9	11			
	14	"	940					
	23	By				2000		
	27	To	2000					
April	6	By				24	6	11
		To	73		9			
		"	50					
May	5	" Loan Interest	186	19	9			
	24	"	10					
June	11	By				675		
	29	To	10					
July	3	"		16	9			
	7	By				22	3	8
	10	To	66	11	1			
Aug.	3	" Loan Interest	186	19	9			
	14	"	10					
		"	150					
		" Stp.			4			
		"	6	16				
	15	"	160					
		"	3	15				
		"	3	14	2			
	16	"	125	16	8			
	20	"	4	8	2			
			10402	10	11	9742	16	7

Frank Waterhouse.

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1900			Dr.	Cr.				
			10402	10	11	9742	16	7
Aug.	20	To Cash	2		4			
	25	By				3063		
Sep.	1	To	1000					
	3		15					
	4		1000					
	25		15					
Oct.	20		63					
	27	Loan Interest	180	16	6			
	31	This account Do.	23	7	8			
		Interest No. 2 a/c.	279	9				
		By Balance				175	2	10
			£12981	4	5	12981	4	5
<hr/>								
1900								
Oct.	31	To Balance	175	2	10			
Nov.	5	By Cash				4977	8	
		To Stamp	5					
	12	By				5000		
		To Disct.	12	12				
	13	"	839	1	4			
		"	1653	11	11			
	15	"	2460	3	2			
	16	"	652	5	6			
	19	"	2013		5			
	27	"	100					
Decr.	21	By				75	15	5
		To	1000					
1901								
Jany.	10	By				44	1	
	14	To	69	3				
	16	"	10					
		"	51	11	3			
Feb.	1	" Loan Interest	191	1	11			
			9232	13	4	10097	4	5

1901			Dr.			Cr.		
			9232	13	4	10097	4	5
Mch.	12	To Cash	21	5				
Apl.	3	"	11	18	6			
	10	"	74		5			
	30	"	150					
		" Loan Interest	189		10			
May	1	By				4656	11	8
	3	To		3	6			
	6	"	700					
		"	1250					
	9	"	2772	7	7			
		"	201	16				
June	1	By				24	13	5
July	2	To	4	9	2			
	25	"	65	18	1			
	31	By				21	19	4
Aug.	3	To Loan Interest	186	19	9			
Oct.	17	"	10					
	18	"	63					
	28	" Loan Interest	182	17	6			
	31	" Interest	1	1	5			
		By Balance				317	2	3
			£15117	11	1	15117	11	1
<hr/>								
1901								
Oct.	31	To Balance	317	2	3			
Nov.	22	By Cash				21		
1902								
Jany.	15					868	7	6
	22		200	5				
			70	6	3			
			587	13	6	889	7	6

1902		Dr.			Cr.		
		587	13	6	889	7	6
Jany.	25	To Cash	15				
Feb.	1	"	18	10			
		"	1	1			
	3	"	282	10			
	7	" Loan Interest	191	1	11		
	10	By			24	8	9
Mch.	1	"			700		
	5	To	75				
	21	"	2	7	10		
April	12	"	72	5	5		
	25	By			24	1	9
	28	To Loan Interest	186	19	9		
May	2	By			918	11	2
	31	To	200	5			
June	4	"	282	10			
June	18	"	2	11	2		
	21	"	1	10	6		
July	1	"	67	3	8		
	17	By			6	5	
	19	To	10				
	24	By			22	7	10
Aug.	2	To Loan Interest	186	19	9		
Sep.	19	"	8				
Octr.	6	By			6	5	
	10	"			21		
		To	63				
	27	" Loan Interest	184	18	7		
	31	" Interest	4		7		
		To Balance	168	18	4		
		£2612	7		2612	7	

1902.			Dr.			Cr.		
Octr.	31	By Balance				168	18	4
Dec.	4	To Cash	150					
1903								
Jany.	13	"	69	3	4			
	14	"	18	10				
Feb.	7	" Loan Interest	203	8	7			
	13	"	75					
Mch.	10	By				15	1	1
	19	To	10					
April	1	By				6	5	
	7	"					25	3
	8	To	72	6				
		"	31	16				
		"	100					
		"	22	18	4			
May	2	" Loan Interest	172	12	1			
	5	By				11	4	7
June	17	To	5					
July	28	"	66	14	1			
	31	By				6	5	
Aug.	1	To Loan Interest	186	19	9			
	6	By				13		8
Oct.	31	To Interest	26	7	6			
Oct.	31	To Loan Interest	186	19	9			
						1151	17	9
						£1397	15	5
<hr/>								
1903								
Oct.	31	To Balance	1151	17	9			
1907								
Feb.	15	To Interest from 31st						
		Octr. 1903 to date	191	17				
"	"	By Cash paid by Mr.						
		John Gill, S. S. C.						
		Edinburgh,				1343	14	9
						£1343	14	9
<hr/>								

Commercial Bank of Scotland, Ltd.

London, 1st October, 1907.

I certify that the foregoing is a true copy taken from the Ledger.

(Signed) W. B. LANG, Acct. [106]

MESSRS. FRANK WATERHOUSE LD. LOAN ACCOUNT

In Account with COMMERCIAL BANK OF SCOTLAND LIMITED,
LONDON.

1898		Dr.		Cr.
Mch. 18	To Cash	1000		
19		1500		
22		1000		
25		2000		
31		2000		
Apl. 7		1000		
15		3500		
18		1000		
30		350		
Sep. 8		1000		
Oct. 4		200		
17		450		
1907				
Feb. 15	To Interest from			
	31st Oct. 1903			
	to date	2471	18	2
" "	By Cash paid by			
	Mr. John Gill		17471	18 2
		<hr/>		
		£17471	18 2	17471 18 2
		<hr/>		

Commercial Bank of Scot. Ld.

London 1st. October, 1907.

I certify the foregoing to be a true statement.

(Signed) W. B. LANG,
Acct.

MESSRS. FRANK WATERHOUSE LIMITED No. 2 ACCOUNT.
 In Account with COMMERCIAL BANK OF SCOTLAND LIMITED,
 LONDON.

1898.		Dr.				Cr.
June 20	To Cash	5000				
Aug. 12		400				
"					400	
Oct. 31	By Balance				5000	
		<hr/>				
		£5400		5400		
		<hr/>				
1898						
Oct. 31	To Balance	5000				
1900						
Dec. 21	By Cash				1000	
1901						
May 6					1250	
Oct. 31	To Interest	190	10	8		
	By Balance				2940	10 8
		<hr/>				
		£5190		10	8	5190 10 8
		<hr/>				
1901						
Oct. 31	To Balance	2940	10	8		
1902						
Oct. 31	To Interest	151	11	6		
	By Balance				3092	2 2
		<hr/>				
		£3092		2	2	3092 2 2
		<hr/>				
1902						
Oct. 31	To Balance	3092	2	2		
1903						
Sep. 28	To Cash	178	19	7		
Oct. 30	" "	42	1	5		
	31 " Interest	166	10	1		
	By Balance				3479	13 3
		<hr/>				
		£3479		13	3	3479 13 3
		<hr/>				

Frank Waterhouse.

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1903			Dr.			Cr.
Oct.	31	To Balance	3479	13	3	
1907						
Feb.	15	To Interest from				
		31st Oct. '03				
		to date	602	10	3	
"	"	By Cash paid by Mr.				
		John Gill, S. S. C.				
		Edinburgh				
					4082	3 6
			£4082	3	6	4082 3 6

Commercial Bank of Scot. Ltd.

London, 1st October, 1907.

I certify that the foregoing is a true copy taken from the Ledger.

(Signed) W. B. LANG,
Acct.

[109]

Edinburgh, 6th February 1914. This is the Assignment by The Commercial Bank of Scotland, Limited, in favor of John Gill, S. S. C., Edinburgh, dated 8th October 1907, referred to in my affidavit of this date.

(Signed) ALEXR. ROBB,
ALEX. GUILD,
Commr.

Edinburgh, 6th February 1914. This is the Assignment by The Commercial Bank of Scotland Limited, in favor of John Gill, S. S. C., Edinburgh, dated 8th October 1907, referred to in my affidavit of this date.

(Signed) J. L. ANDERSON,
ALEX. GUILD,
Commr.

Edinburgh, 6th February 1914. This is the Assignment by The Commercial Bank of Scotland Limited, in favor of John Gill, S. S. C., Edinburgh,

dated 8th October 1907, referred to in my affidavit of this date.

(Signed) W. B. LANG,
ALEX. GUILD,
Commr.

Edinburgh, 27th March 1914. This is the Assignment by The Commercial Bank of Scotland, Limited, in favor of John Gill, W. C. Edinburgh, dated 8th October 1907 and marked "B" referred to in my affidavit of this date.

(Signed) JAMES GILL,
ALEX. GUILD,
Commr. [110]

Portion of Plaintiff's Exhibit "E"—Account, Frank Waterhouse, Ltd. With The Commercial Bank of Scotland, Ltd.

No. II A/C

FRANK WATERHOUSE LTD.

In Account with The Commercial Bank of Scotland Limited, London.

1898				Dr.			Cr.			
June	3	To Cost of Cable								
		Message			12					
	20	"	154	5000						
Aug.	12	"	18561	400						
		By						400		
Oct.	29	By reversing 3rd June						12		
	31	By Balance						5000		
				£5400	12		5400	12		
<hr/>										
1898										
Oct.	31	To Balance			5000					
1899										
Oct.	31	By Balance						5000		
				£5000				5000		
<hr/>										
1899										
Oct.	31	To Balance			5000					
1900										
Oct.	31	By Balance						5000		
				£5000				5000		
<hr/>										
1900										
Oct.	31	To Balance			5000					
1901										
Dec.	21	By						1000		
1901										
May	6	By						1250		
Oct.	31	To Interest			190	10	8			
		By Balance						2940	10	8
				£5190	10	8	5190	10	8	
<hr/>										
1901										
Oct.	31	To Balance			2940	10	8			
1902										
Oct.	31	To Interest			151	11	6			
		By Balance						3092	2	2
				£3092	2	2	3092	2	2	

				Dr.			Cr.		
1902				3092	2	2			
Oct.	31	To Balance							
1903									
Sept.	28	To	15492	178	19	7			
Oct.	30	To	94	42	1	5			
	31	To Interest		166	10	1			
		By Balance					3479	13	3
				£3479	13	3	3479	13	3
1903									
Oct.	31	To Balance		3479	13	3			
1904									
Oct.	31	By Balance					3479	13	3
				£3479	13	3	3479	13	3
1904									
Oct.	31	To Balance		3479	13	3			
1905									
Oct.	31	By Balance					3479	13	3
				£3479	13	3	3479	13	3
1905									
Oct.	31	To Balance		3479	13	3			
1906									
Oct.	31	By Balance					3479	13	3
				£3479	13	3	3479	13	3
1906									
Oct.	31	To Balance		3479	13	3			
1907									
Apr.	24	By Balance					3479	13	3
		By c/a Interest to							
		15 Feb. 1907							
		both per John Gill							
		Edinburgh					65	11	4
		To Interest to 15th							
		Feb. 1907		65	11	4			
				£3545	4	7	3545	4	7

FRANK WATERHOUSE LIMITED.

In LOAN ACCOUNT with THE COMMERCIAL BANK OF SCOTLAND
LIMITED, LONDON.

Date.	Lent.	Balance.	Days.	Rate.	Interest.		
1898							
March 18	1000	1000	1	5	2	9	
19	1500	2500	3	"	1	6	
22	1000	3500	2	"	19	2	
25	2000	5500	6	"	4	10	5
31	2000	7500	7	"	7	3	10
April 7	1000	8500	8	"	9	6	4
15	3500	12000	3	"	4	18	8
18	1000	13000	12	"	21	7	5
30	350	13350	7	"	12	16	1
					62	5	2
May 7		13350					
"		13350	91	5	166	8	4
Aug. 6		13350					
"		13350	33	5	60	7	
Sep. 8	1000	14350	26	"	51	2	2
Octr. 4	200	14550	13	"	25	18	3
17	450	15000	14	"	28	15	4
					166	2	9
31	<u>£15000</u>						
Octr. 31	15000	15000	96	5	197	5	3
1899							
Feby. 4		15000	91	5	186	19	9
May 6		15000	178	5	365	15	
Octr. 31	<u>£15000</u>						
Oct. 31	15000	15000	44	5	90	8	3
Decr. 14		15000	43	6½	114	17	3
1900							
Jany. 26		15000	6	5	16	8	10
Feby. 3		15000			221	14	4
"		15000	91	5	186	19	9
May 5		15000	91	5	186	19	9
Aug. 4		15000	88	5	180	16	6
Octr. 31	<u>£15000</u>						

Date.	Lent.	Balance.	Days.	Rate.	Interest.		
1900							
October 31	15000	15000	93	5	191	1	11
1901							
Febby. 1		15000	92	5	189		10
May 4		15000	91	5	186	19	9
Aug. 3		15000	89	5	182	17	6
Octr. 31							
		<u>£15000</u>					
1901							
Octr. 31	15000	15000	93	5	191	1	11
1902							
Febby. 1		15000	91	5	186	19	9
May 3		15000	91	5	186	19	9
Aug. 2		15000	90	5	184	18	7
Octr. 31							
		<u>£15000</u>					
1902							
October 31	15000	15000	99	5	203	8	7
1903							
Febby. 7		15000	84	5	172	12	1
May 2		15000	91	5	186	19	9
Aug. 1		15000	91	5	186	19	9
Octr. 31							
		<u>£15000</u>					
1903							
October 31	15000	15000	98	5	201	7	5
1904							
Febby. 6			91	5	186	19	9
May 7			177	5	363	13	11
					752	1	1
Octr. 31							
		<u>£15000</u>					
1904							
October 31	15000	15000	187	5	384	4	10
1905							
May 6			178	5	365	15	
					749	19	10
Octr. 31							
		<u>£15000</u>					

Dr.

LOAN A/C.

Interest from 31 Oct. 1903			
to 31 Oct. 1904	752	1	1
from 31 Oct. 1904			
to 31 Oct. 1905	749	19	10
from 31 Oct. 1905			
to 31 Oct. 1906	750		

CURRENT A/C. No. 1.

Interest from 31 Oct. 1903			
to 31 Oct. 1904	52	8	3
from 31 Oct. 1904			
to 31 Oct. 1905	55	4	11
from 31 Oct. 1905			
to 31 Oct. 1906	62	1	11

CURRENT A/C. No. 2.

Interest from 31 Oct. 1903			
to 31 Oct. 1904	182	9	1
from 31 Oct. 1904			
to 31 Oct. 1905	166	18	
from 31 Oct. 1905			
to 31 Oct. 1906	187	11	10

1907

April 24 By John Gill, Edinburgh 2958 14 11

£2958 14 11 2958 14 11

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ANALYSIS OF FOREGOING ACCOUNTS.

I No. 1 A/C.

Sum due to Bank at 31st Octr. 1903	1151	17	9
Interest thereon per Suspence a/c. from 31 Oct.			
1903 to 31 Oct. 1906	169	15	1
Interest from 31st Oct. 1906 to 15 Feby. 1907			
per No. 1 a/c.	22	1	11

II LOAN A/C.

Sum due to Bank at 31 Oct. 1903	15000		
Interest thereon per Susp. a/c. from 31 Oct.			
1903 to 31 Oct. 1906	2252		11
Interest from 31st Oct. 1906 to 15th Feby.			
1907 per Loan a/c.	219	17	3

III No. II A/C.

Sum due to Bank at 31st Octr. 1903	3479	13	3
Interest thereon per Suspence a/c. from 31			
Octr. 1903 to 31st Oct. 1906	536	18	11
Interest from 31st Oct. 1906 to 15 Feby. 1907			
per No. 2 a/c.	65	11	4

£22897 16 5

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**Plaintiff's Exhibit "F"—Articles of Incorporation
of Frank Waterhouse & Co., Inc.**

Volume 7, Articles of Incorporation, Page 83

**ARTICLES OF INCORPORATION
of**

FRANK WATERHOUSE & CO, INC.

Articles of Incorporation of

Know all men by these presents: That we, Frank Waterhouse, **Jas. P. Townsend** and **W. H. Bogle** citizens of the United States of America, and over twenty-one years of age, do hereby associate ourselves together for the pupose of incorporating, and do hereby incorporate, under and in conformity to the laws of the State of Washington, a corporation, and do hereby adopt and certify the following Articles of Incorporation to wit:

Article I.

The name of said corporation shall be **Frank Waterhouse & Co. Inc.**

Article II.

The objects for which said corporation is formed and shall exist are as follows:

First. To build, purchase, charter, rent, acquire, and operate sailing vessels, steamships, steamers, tugs, barges and lighters, to be used in all lawful business upon the ocean, seas, sounds, tide-waters, rivers, and canals for the transportation of passengers, freight and mail; to purchase and erect and lease wharves, dry-docks, store houses and other property; to act as shipping agents and factors

and [134] negotiate charters on commission or otherwise; to acquire, own, locate, lease, sell and operate mines and mining property; to buy and sell merchandise and carry on a mercantile business; to acquire and operate warehouses; and to do any and all other things incident to said business or necessary and proper or convenient to be done in the furtherance of its business.

Second. Said corporation shall have general power:

1. To sue and be sued in any court having competent jurisdiction.

2. To make and use a common seal and to alter the same at pleasure.

3. To purchase, hold, mortgage, sell and convey real and personal property.

4. To appoint such officers, agents, and servants as the business of the corporation shall require; to define their powers, prescribe their duties, and fix their compensation.

5. To require of them such security as may be thought proper for the fulfillment of their duties, and to remove them at will, except that no trustee shall be removed from office unless by a vote of two-thirds of the stockholders.

6. To make by-laws not inconsistent with the organic act of this state, and the laws of the congress of the United States, and of this state.

- 7 To provide for the management of its property, the regulation of its affairs, the transfer of its stock, and for carrying on all kinds of business within the

objects and purposes of the company, as expressed in the Articles of Incorporation.

Article III.

The capital stock of said company shall be one [135] hundred and fifty thousand (\$150,000) Dollars, divided into Fifteen Hundred (1500) shares of the par value of one hundred Dollars each.

Article IV.

Said corporation shall exist for a period of Fifty (50) years.

Article V.

The business of said corporation shall be managed by a board of three trustees, to be selected annually by the stockholders thereof but the number of trustees may be increased or diminished to any number not less than two at any time by the stockholders.

The Board of Trustees of said corporation, who shall manage its business from the date of its incorporation to the 15th day of March A. D. 1901, shall be composed of the following named persons:

Frank Waterhouse, of Seattle Wash.

W. P. Prichard, of Seattle Wash.

W. H. Bogle, Seattle, Wash.

The first election of Trustees by the stockholders shall be held on the 15th day of March, 1901, and an election of Trustees shall be held annually thereafter; but the corporation may change the time for such election at any time.

Article VI.

The principal place of business and main office of said corporation shall be at Seattle, County of King, and State of Washington.

In Witness Whereof, We, the incorporators, have executed these articles in triplicate, and have subscribed the same [136] this 6th day of October, A. D. 1900.

FRANK WATERHOUSE.

W. H. BOGLE.

JAMES P. TOWNSEND.

State of Washington,
King County,—ss.

Before me, the undersigned Notary Public in and for the State of Washington, personally came and appeared Frank Waterhouse, Jas. P. Townsend and W. H. Bogle to me known and known to me to be the individuals described in and who executed the foregoing instrument, and who acknowledged to me each for himself, that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal this 6th day of October, 1900.

CHAS. H. BENNETT,

Notary Public for Washington, residing therein at
Seattle, said County.

[C. H. B. Not'y Pub. Com. Ex. May 7, 1901.]

[10¢ I. R. Stamp attached. —]

Filed for record at request of Frank Waterhouse
Oct. 8, 1900 at 45 min. past 9 A. M.

E. H. EVENSON,

County Auditor.

By Ellen S. Fish,

Dep. [137]

Exhibit "F"—Oath of Director.

EXHIBIT "F"

District of Columbia,

City and County of Washington,—ss.

Under the provisions of Section 884 of the Revised Statutes of the United States I, Thomas P. Kane Acting Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete copy of the original oath of Frank Waterhouse, Director of the Boston National Bank of Seattle, Washington, executed on the 26th day of January, 1903, and of the whole of such original on file and of record in my office.

IN TESTIMONY WHEREOF, I have hereto subscribed my name, and caused my Seal of Office to be affixed to these presents, at the Treasury Department in the City of Washington and District of Columbia, this 26th day of November, 1913, A. D.

(Signed) T. P. KANE,

Acting Comptroller of the Currency.

[Seal of Comptroller of the Currency.]

OATH OF DIRECTOR.

State of Washington,

County of King,—ss.

I, the undersigned, Director of the Boston National Bank of Seattle in the State of Washington being a citizen of the United States, and a resident of the State of Washington do solemnly swear that I will, so far as the duty devolves on me, diligently and honestly administer the affairs of said Association;

that I will not knowingly violate, or willingly [138] permit to be violated, any of the provisions of the Statutes of the United States under which this Association has been organized; and that I am the owner, in good faith and in my own right of the number of shares of stock required by said Statutes, subscribed by me or standing in my name on the books of the said Association; and that the same is not hypothecated, or in any way pledged as security for any loan or debt.

FRANK WATERHOUSE,

Place of residence: Seattle, Wash.

Subscribed and sworn to this 26th day of January 1903, before the undersigned, a Notary Public in and for said county.

[Official Seal of Officer.]

GEO. F. BEGG,

Notary Public.

Note.—Each director when elected must take the oath of office, and, under section 5147, U. S. R. S., it should be transmitted to the Comptroller of the Currency immediately after the election. If the officer administering the oath has no seal, a certificate of the proper State, county or court official to the effect that such officer is authorized to take acknowledgements must be attached.

162 T 4 [139]

Plaintiff's Exhibit "G"—Oath on Registry.

I, Frank Waterhouse, of Seattle in the County of — and the State of Wash., do swear according to the best of my knowledge and belief, that the steamer or vessel called the "Garonne," of Seattle, is of

burden 3945 tons, gross, and 2319 (Official Number 86504) tons, net, and was built at Gavan, Scotland, in the year one thousand eight hundred and 71, as appears by — Authorized to be registered as an American Vessel by an Act of Congress approved April 27, 1900.

That I am a citizen of the United States of America; and owner of 1/2 of said vessel, together with Chas. Richardson of Tacoma, Wash. 1/2 — citizens of the United States of America are the true and only owners of said vessel, and that no subject or citizen of any foreign power is, directly or indirectly, by way of trust, confidence, or otherwise, interested therein, or in the profits or issues thereof, and that C. G. Conradi, the present master thereof, is a citizen of the United States, having been naturalized at Seattle, Wash. in 1900. SO HELP ME GOD.

(Signed) FRANK WATERHOUSE.

P. O. Address: _____

Subscribed and sworn to before me this 10th day of May, 1900.

S. B. HOUSE,

Dep. Collector of Customs. [140]

MASTER'S OATH.

I, C. G. Conradi, master of the before-mentioned Steamer, do solemnly swear that I am truly a citizen of the United States of America, having been naturalized at Seattle, Wash. 1900. SO HELP ME GOD.

(Signed) C. G. CONRADI.

Subscribed and sworn to before me this 10th day of May, 1900.

S. B. HOUSE,

Dep. Collector of Customs.

"I certify this to be a true copy of the original Oath on Registry on file in this office.

[Seal]

(Signed) CHAS. MILLER,

Deputy Collector.

(10¢ I. R.)

Custom-house, Seattle, Wash., June 20th, 1916."

[141]

Plaintiff's Exhibit "H"—Excerpt from Bankers' Books Evidence Act, 1879.

BANKERS' BOOKS EVIDENCE ACT, 1879
(42 Vict.) (Ch. 11.)

CHAPTER II.

An Act to amend the Law of Evidence with respect to Bankers' Books.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Bankers' Books Evidence Act, 1879.

2. The Bankers' Books Evidence Act, 1876, shall be repealed as from the passing of this Act, but such repeal shall not affect anything which has been done or happened before such repeal takes effect.

3. Subject to the provisions of this Act, a copy of any entry in a banker's book shall in all legal pro-

ceedings be received as *prima facie* evidence of such entry, and of the matters, transactions, and accounts therein recorded.

4. A copy of an entry in a banker's book shall not be received in evidence under this Act unless it be first proved that the book was at the time of the making of the entry one of the ordinary books of the bank, and that the entry was made in the usual and ordinary course of business, and that the book is in the custody or control of the bank.

Such proof may be given by a partner or officer of the bank, and may be given orally or by an affidavit sworn before any commissioner or person authorized to take affidavits.

5. A copy of an entry in a banker's book shall not be [142] received in evidence under this Act unless it be further proved that the copy has been examined with the original entry and is correct.

Such proof shall be given by some person who has examined the copy with the original entry, and may be given either orally or by an affidavit sworn before any commissioner or person authorized to take affidavits.

6. A banker or officer of a bank shall not, in any legal proceeding to which the bank is not a party, be compellable to produce any banker's book the contents of which can be provided under this Act, or to appear as a witness to prove the matters, transactions, and accounts therein recorded, unless by order of a judge made for special cause.

7. On the application of any party to a legal proceeding a court or judge may order that such party

be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceedings. An order under this section may be made either with or without summoning the bank or any other party, and shall be served on the bank three clear days before the same is to be obeyed, unless the court or judge otherwise directs.

8. The cost of any application to a court or judge under or for the purposes of this Act, and the costs of anything done or to be done under an order of a court or judge made under or for the purposes of this Act shall be in the discretion of the court or judge, who may order the same or any part thereof to be paid to any party by the bank, where the same have been occasioned by any default or delay on the part of the bank. Any such order against a bank may be enforced as if the bank was a party to the proceeding.

9. In this Act the expressions "bank" and "banker" mean [143] any person, persons, partnership, or company carrying on the business of bankers and having duly made a return to the Commissioners of Inland Revenue, and also any savings bank certified under the Acts relating to savings banks, and also any postoffice savings bank.

The fact of any such bank having duly made a return to the Commissioners of Inland Revenue may be proved in any legal proceeding by production of a copy of its return verified by the affidavit of a partner or officer of the bank, or by the production of a copy of a newspaper purporting to contain a copy of such return published by the Commissioners of Inland

Revenue; the fact that any such savings bank is certified under the acts relating to savings banks may be proved by an office or examined copy of its certificate; the fact that any such bank is a postoffice savings bank may be proved by a certificate purporting to be under the hand of Her Majesty's Postmaster-General or one of the secretaries of the postoffice.

Expressions in this Act relating to "bankers' books" include ledgers, day-books, cash-books account-books, and all other books used in the ordinary business of the bank.

10. In this Act—

The expression "legal proceeding" means any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitration;

The expression "the court" means the court, judge, arbitrator, persons, or person before whom a legal proceeding is held or taken;

The expression "a judge" means with respect to England a judge of the High Court of Justice and with respect to Scotland a lord ordinary of the Outer House of the Court of [144] Session, and with respect to Ireland a judge of the High Court of Justice of Ireland;

The judge of a county court may with respect to any action in such court exercise the power of a judge under this Act.

11. Sunday, Christmas Day, Good Friday, and any bank holiday shall be excluded from the computation of time under this Act.

"Edinburgh, 27 March, 1914. This is the copy of the Bankers' Books Evidence Act, 1879, marked "A"

referred to in my affidavit of this date.

(Signed) JAMES GILL,
ALEX. GUILD,
Commr." [145]

**Plaintiff's Exhibit "I"—Agreement, October 6, 1910,
Between Frank Waterhouse and Frank Water-
house, Ltd., etc.**

MEMORANDUM OF AGREEMENT, made this Sixth day of October, 1900, between FRANK WATERHOUSE, of Seattle, Washington, of the one part, and FRANK WATERHOUSE, LIMITED, a corporation of London, E. C., of the other part, witnesseth:

1. The said Frank Waterhouse agrees to immediately form and incorporate an American Company, which shall have a paid-up cash capital of at least fifty thousand (50,000) dollars; said company to be empowered by its articles of incorporation to carry on shipping and other kindred business, and to have power to execute bonds, notes, or other evidences of indebtedness, which shall be secured by mortgage or other security upon its assets.

2. Said Frank Waterhouse also agrees and covenants that said company so formed and organized by him shall purchase from said Frank Waterhouse, Limited, subject to the charges affecting the same, all of the assets of every kind and description, legal or equitable, including choses in action, commissions, earnings, as well as the tangible property now belonging to said Frank Waterhouse, Limited, or held in trust for it, and mentioned in the schedule hereto, at and for the prices and sum of two hundred and thirty

thousand (230,000) dollars, payable as follows: Fifty thousand (50,000) dollars cash in hand upon the transfer of said assets to said American company, and the balance of one hundred and eighty thousand (180,000) dollars in ten equal semi-annual payments, to be evidenced by the notes or bonds of said purchasing company, payable as above specified and bearing interest at the rate of five and one-half ($5\frac{1}{2}$) per cent per annum, said interest being payable semi-annually on the first days of November [146] and May of each year; said notes or bonds, with the interest coupons thereon, to be secured by a mortgage upon all of the property and assets of said purchasing company owned at the time of the execution of said mortgage, and upon all property of a similar kind thereafter acquired by said purchasing company during the running of said indebtedness; said notes, bonds or mortgage to be in such form as shall be satisfactory to the attorneys of said vendor company.

3. The said purchasing company, in addition to the price above named, agrees to assume and pay certain indebtedness of said vendor company owing in the State of Washington, U. S. A., as follows: Debts due divers and sundry persons in Seattle or elsewhere, aggregating about \$50,000 a list of which is to be furnished said vendor company with the execution of this agreement. Said vendor company agrees to discharge all of its London indebtedness with said purchase money, except the indebtedness, if any, due Trinder, Anderson & Company, London.

4. Said Frank Waterhouse further agrees and

covenants to waive in favor of said Frank Waterhouse, Limited, any interest or share in the money so paid to said last-named company which may remain after the payment of all the debts of that company and which would otherwise belong to him as a stockholder in said vendor company. And he agrees, in order to carry out and effectuate this article in the agreement, that he will transfer or surrender his shares in said vendor company whenever so requested by said company.

5. That said Frank Waterhouse, Limited, agrees to sell its property and assets to the company to be organized by said Frank Waterhouse upon the terms and at the price hereinabove specified, such transfer to be made immediately upon [147] the organization of said company and on compliance with the agreement of purchase by such American Company as herein stated.

6. Said Frank Waterhouse, Limited, further agrees and covenants that, immediately after the sale and transfer of its said property and assets as herein stipulated it will withdraw from and cease to do or carry on any active business operations, and stop all office or directors' charges and expenses, and will appropriate the proceeds of said sale to the liquidation and payment of the indebtedness of said company as rapidly as may be; such proceeds to be applied, if practicable, in the first instance, to the payment and discharge of such of the debts of said company as are bearing the highest rate of interest.

7. It is expressly agreed, stipulated and covenanted between the parties hereto that said purchas-

ing company shall in no wise be obligated or liable for any indebtedness or liability of said vendor company in England, except as aforesaid, whether now existing or hereafter created or incurred, and that the payment of the purchase price of two hundred and thirty thousand (230,000) dollars for said property and assets and the assumption of the debts shown in the schedule under clause three of this Agreement are the only liabilities to be assumed or incurred by said purchasing company for or on account of said assets and that said Frank Waterhouse personally shall not be liable for the indebtedness of said purchasing company to said vendor company, and said Frank Waterhouse, Limited, shall in no wise be responsible or liable for any debt or liability hereafter created or incurred by said purchasing company.

IN WITNESS WHEREOF, the parties hereto have executed [148] this instrument in duplicate this the sixth day of October, A. D. 1900.

FRANK WATERHOUSE.

FRANK WATERHOUSE, LIMITED.

By JOHN M. MITCHELL.

WILLIAM McEWEN.

Witnesses:

W. H. BOGLE. [149]

SCHEDULE.

1. All right, titles and interest, legal or equitable, in the General Agency for the State of Washington, Alaska and British Columbia for the Equitable Society.

2. All right, title and interest, legal or equitable,

in the leasehold interest in offices of the Company at Seattle, Wash., and in the furniture, fixtures, and stationery thereof.

3. All interest, legal or equitable, in the steamer "Winthrop."

4. All interest, legal or equitable, in the warehouse and lot on which same is situated, erected by the company at Nome, Alaska.

5. All right, title and interest, legal or equitable, of, and into all book debts, accounts, claims, choses in action and dues owing to the company by any persons, firms or companies whatsoever.

6. All interest and right of said company in and to commissions earned and to be earned upon existing charters of vessels to the United States Government.

7. All interest and right of said company in and to the charter moneys accruing from the United States Government on the existing character of the S. S. "Garonne."

8. All interest and right of said company in and to all liquors and wines, goods and merchandise belonging to it or in which it is interested, now in Seattle, Wash., Nome, Alaska, or elsewhere.

9. All other property of every kind and description, real, personal, shipping, agencies and goodwill, things possessed and choses in action, either held by the company or [150] by others in trust for it, wheresoever located or howsoever held.

10. All right, title or interest, as shareholder or otherwise, in the Yorke Lighterage Company, and all claims for advances and moneys paid out for the benefit of said Yorke Lighterage Company.

(Sig.) WILLIAM McEWEN. [151]

FRANK WATERHOUSE, LIMITED.

Unpaid Bills, October 5, 1900.

A. D. T. Co.....	3.70
F. P. Dow.....	11.00
Felitz Tent and Awning Co.....	8.00
W. P. Fuller & Co.....	136.65
Golden Rule Bazar.....	.90
Golden Wall Paper Co.....	65.90
Hanes & Gallenes.....	7.50
Lowman & Hanford S. & P. Co.....	116.13
Moran Bros. Co.....	3,822.14
N. W. Imp. Co. Nome Coal.....	1,110.44
Meyer & Co.....	14.25
N. W. Fixture Co.....	117.95
Official Gazette.....	5.00
Post Intelligencer Co.....	170.55
Seattle Ice Co.....	1.75
Seattle Brewing & Malting Co.....	100.00
Seattle Hardware Co.....	1.95
H. L. Dizer.....	3.80
Standard Oil Co.....	295.94
Schwabacher Bros. & Co.....	3,478.61
Seattle Market.....	3,451.68
Stewart & Holmes Drug Co.....	94.65
Seattle Electric Co.....	4.00
Seattle Transfer Co.....	195.75
Vaas & Co.....	.60
Washington Rubber Co.....	5.00
Western Union Telegraph Co.....	2.00
Liquors, Petty Bills & Salesman expense claims.....	50.00

Trinder, Anderson & Co.....	13,275.00
Note at Puget Sound National Bank.....	15,000.00
Unpaid Salaries to Oct. 1.....	950.00
“Garonne” Pay Roll, 2 Mos. from Aug. 6.	8,560.00
Hawaiian Tramway Co.....	127.00
Bogle & Richardson.....	775.00

\$38,687.84

Endorsed notes of Yorke Lighterage Co.

for..... 13,000.00

\$51,687.84

[152]

Order Settling Bill of Exceptions.

The foregoing entitled cause coming on regularly for hearing before the Court on this 14th day of December, A. D. 1916, the time duly designated by the Court for settling and certifying the bill of exceptions herein, the plaintiff and defendant now appearing by their respective attorneys of record herein, and the said plaintiff having, within the time, extended by stipulation and the order of the Court herein, for that purpose, duly proposed the foregoing as the bill of exceptions in said action, and the parties now agreeing to the settlement of the foregoing as the bill of exceptions therein;

Now, therefore, it is by the Court and the Judge of said court presiding at the trial of said cause ORDERED AND CERTIFIED that the foregoing be, and the same hereby is, settled as the true bill

of exceptions in said cause, and that said bill of exceptions, together with the exhibits therein referred to and thereto attached, includes all the material facts and evidence herein, and the same is hereby approved, allowed and made a part of the record herein; and the same being so settled and certified, it is hereby ordered to be filed herein by the clerk.

JEREMIAH NETERER,
Judge. [153]

Copy of within Proposed Bill of Exceptions received, and due service of same acknowledged this 30th day of September, 1916.

BOGLE, GRAVES, MERRITT & BOGLE,
Attorneys for Defendant.

[Indorsed]: Bill of Exceptions. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Dec. 14, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [154]

[Title of Court and Cause.]

Assignment of Errors.

The above-named plaintiff, in connection with and as a part of his petition for a writ of error filed herein, makes the following assignment of errors, which he avers were committed by the Court in the rendition of the judgment against this plaintiff, appearing upon the record herein:

I.

The Court erred in rejecting the following evidence offered by the plaintiff upon said trial, to wit:

A certified copy of the Bankers' Books Evidence Act, 1879 (42 Vict. Chap. 11).

II.

The Court erred in rejecting the following evidence offered by the plaintiff upon said trial, to wit:

An assignation made by The Commercial Bank of Scotland, Limited, in favor of John Gill, and dated October 8, 1907, same being exhibit "D" attached to the bill of exceptions. [155]

III.

The Court erred in rejecting the following evidence offered by said plaintiff upon said trial, to wit:

The account between the Commercial Bank of Scotland, Ltd., and Frank Waterhouse, Ltd., which said account is attached to the assignation described in Assignment of Error II herein.

IV.

The Court erred in rejecting the following evidence offered by said plaintiff upon said trial, to wit:

"The payment of £22,897:16:5 was made to the bank by the said John Gill in exchange for the assignation in his favor. The payment was made by a cheque of his own I understand. I have not the particulars of the cheque."

V.

The Court erred in rejecting the following evidence offered by said plaintiff upon said trial, to wit:

"I have examined the copy of the accounts of Frank Waterhouse, Ltd., with the Commercial Bank of Scotland, Ltd., appended to the deposition of George Sutherland Coutts, taken on the 17th December 1913, and I am satisfied that said accounts

correctly set forth the amount advanced to said Frank Waterhouse, Ltd. The amounts due by Frank Waterhouse, Ltd., to the bank at 31st October, 1903, were as follows:— (1) On the current or general account £1151. 17. 9. (2) On the loan account £15,000 and (3) on No. 2 account £3479. 13. 3. These amount in all, with interest to February 15, 1907, to £22,897. 16. 5.” [156]

VI.

The Court erred in rejecting the following evidence offered by said plaintiff upon said trial, to wit:

“Subsequently I wrote to the Commercial Bank of Scotland, Ltd., intimating my appointment and asking them to send me a certified statement of their claims in the liquidation. They informed me that the company’s indebtedness to them had been settled by Mr. John Gill, S.S.C. Edinburgh, and that they had assigned their claim to him.”

VII.

The Court erred in receiving the following evidence offered by the defendant herein upon said trial, to wit:

An agreement made on the 6th day of October, 1900, between Frank Waterhouse, of Seattle, Washington, of the one part, and Frank Waterhouse, Limited, a corporation of London, E. C., of the other part, which said agreement is attached to the bill of exceptions herein marked exhibit “I” and made a part thereof.

VIII.

The Court erred in rejecting the following evidence offered by said plaintiff upon said trial, to wit:

A copy of account identified by William McEwen, and which said account is attached to the bill of exceptions herein, marked exhibit "E" and made a part of said bill of exceptions.

IX.

The Court erred in holding and deciding that the testimony introduced in said cause was not sufficient to warrant [157] a verdict in favor of plaintiff.

X.

The Court erred in withdrawing the cause from the jury.

XI.

The Court erred in rendering a judgment of dismissal of said cause.

WHEREFORE, plaintiff prays that the judgment of the Honorable District Court of the United States for the Western District of Washington, Northern Division, be reversed, and that such direction be given that full relief may inure to plaintiff by virtue of his writ of error.

HUGHES, McMICKEN, DOVELL & RAMSEY,

Attorneys for Plaintiff.

Copy of within Assignment of Errors received and due service of same acknowledged this 14th day of December, 1916.

BOGLE et al. & PRESTON,

BOGLE, GRAVES, M. & B.,

Attorneys for Defendant.

[Indorsed]: Assignment of Errors. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Dec. 14, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [158]

[Title of Court and Cause.]

Petition for Writ of Error.

Now comes the above-named plaintiff and says that on or about the 10th day of July, 1916, this Court entered judgment herein in favor of the defendant and against this plaintiff, in which judgment and the proceedings had prior thereunto in this cause certain errors were committed, to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

WHEREFORE, this plaintiff prays that a writ of error may issue in his behalf out of the United State Circuit Court of Appeals for the Ninth Circuit, for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals; and further prays that an order be made fixing the amount of security which the said petitioner shall give upon said writ of error.

Dated December 14th, 1916.

HUGHES, McMICKEN, DOVELL & RAMSEY,

Attorneys for Plaintiff. [159]

Copy of within petition for order allowing writ of error received and due service of same acknowledged this 14th day of December, 1916.

PRESTON & THORGRIMSON,

BOGLE, GRAVES, M. & B.,

Attorneys for Defendant. [160]

[Indorsed]: Petition for Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Dec. 14, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [161]

[Title of Court and Cause.]

Order Allowing Writ of Error.

This 14th day of December, 1916, came the plaintiff, by his attorneys, and filed herein and presented to the Court his petition praying for the allowance of a writ of error, an assignment of errors intended to be urged by him, praying also that a transcript of the record, proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the Court does allow the writ of error upon the plaintiff giving bond, according to law, in the sum of three hundred (\$300) dollars.

JEREMIAH NETERER,

Judge.

[Indorsed]: Order Allowing Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Dec. 14, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [162]

Copy of this order granting writ of error and fixing amount of bond received and due service of

same acknowledged this 14th day of December, 1916.

PRESTON & THORGRIMSON,

BOGLE, GRAVES, M. & B.,

Attorneys for Defendant.

[Indorsed]: Order Allowing Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Dec. 14, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [163]

[Title of Court and Cause.]

Cost Bond.

KNOW ALL MEN BY THESE PRESENTS: That we, Maurice McMicken, as administrator with the will annexed of John Gill, deceased, the above-named plaintiff, as principal, and the United States Fidelity and Guaranty Company, a body corporate, duly incorporated under the laws of the State of Maryland and authorized to transact the business of surety in the State of Washington, as surety, executing this bond on behalf of said principal, are jointly and severally held and firmly bound unto Frank Waterhouse, the defendant above-named, his heirs, executors, administrators and assigns, in the just and full sum of three hundred (\$300) dollars, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firmly¹ by these presents.

Sealed with our seals and dated this 14th day of December, A. D. 1916. [164]

THE CONDITION OF THIS OBLIGATION IS SUCH THAT WHEREAS, in the above-entitled action a judgment was entered on the 12th day of July, 1916, dismissing the said action and awarding costs; and

WHEREAS, the said plaintiff has obtained from said Court a writ of error to reverse the said judgment in said action, and a citation directed to the defendant is about to be issued, citing and admonishing him to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held at San Francisco, in the State of California;

NOW, THEREFORE, if the said plaintiff shall prosecute the said writ of error to effect and shall answer all costs that may be awarded against him if he shall fail to make good his plea, then the above obligation to be void; otherwise to remain in full force and effect.

MAURICE McMICKEN,
As Administrator With the Will Annexed of John
Gill, Deceased.

UNITED STATES FIDELITY AND GUAR-
ANTY COMPANY.

[Seal]

By GROVER C. WINN,
Its Attorney in Fact. [165]

Sufficiency of the surety on the foregoing bond approved by me this 14th day of December, A. D. 1916.

JEREMIAH NETERER,
Judge of Said Court.

Copy of within cost bond received and due service

of same acknowledged this 14th day of December,
A. D. 1916.

PRESTON & THORGRIMSON,
BOGLE, GRAVES, M. & B.,
Attorneys for Defendant.

[Indorsed]: Cost Bond. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Dec. 14, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [166]

[Title of Court and Cause.]

Writ of Error.

United States of America,
Ninth Judicial District,—ss.

The President of the United States, to the Honorable Judges of the District Court of the United States for the Western District of Washington, Northern Division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said District Court before you, or some of you, between John Gill, for whom has been substituted Maurice McMicken, Administrator with the will annexed of John Gill, deceased, plaintiff, and Frank Waterhouse, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, [167] if judgment be therein given, that then under your seal,

distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, at the courtrooms of said Court in the city of San Francisco, in the State of California, together with this writ, so that you have the same at the said place, in said circuit on the 10th day of January next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, this 14th day of December, A. D. 1916, and in the one hundred and forty-first year of the Independence of the United States of America.

FRANK L. CROSBY,
Clerk of said District Court of the United States
for the Western District of Washington.

The foregoing writ is hereby allowed.

JEREMIAH NETERER,
United States District Judge for the Western Dis-
trict of Washington.

Received copy of the foregoing writ of error,
lodged with me for defendant in error, this 14th
day of December, 1916.

FRANK L. CROSBY,
Clerk.

By Ed M. Lakin,
Deputy. [168]

Copy of within writ of error received and due service of same acknowledged this 14th day of December, 1916.

PRESTON & THORGRIMSON,
BOGLE, GRAVES, M. & B.,
Attorneys for Defendant in Error.

[Indorsed]: No. 1633. Original. In the United States Circuit Court of Appeals for the Ninth Circuit. John Gill, for Whom has been Substituted Maurice McMicken, Administrator with the Will Annexed of John Gill, Deceased, Plaintiff in Error, vs. Frank Waterhouse, Defendant in Error. Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Dec. 14, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. Hughes, McMicken, Dovell & Ramsey, Attorneys for Plaintiff in Error. 661-670 Colman Building, Seattle, Wash. [169]

[Title of Court and Cause.]

Citation on Writ of Error.

United States of America,
Ninth Judicial Circuit,—ss.

To Frank Waterhouse, Defendant in Error:

You are hereby cited and admonished to be and appear at a term of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, State of California, in said circuit, on the 10th day of January, 1917, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Western Dis-

trict of Washington Northern Division, wherein said John Gill, for whom has been substituted Maurice McMicken, Administrator with the will annexed of John Gill, deceased, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why [170] speedy justice should not be done to the parties in that behalf.

Dated this 14th day of December, 1916.

PRESTON & THORGRIMSON,
BOGLE, GRAVES, M. & B.,

United States District Judge for the Western District of Washington.

FRANK L. CROSBY,
Clerk of said United States District Court for the Western District of Washington.

Copy of within citation received and due service of same acknowledged this 14th day of December, 1916.

PRESTON & THORGRIMSON,
BOGLE, GRAVES, M. & B.,
Attorneys for Defendant in Error.

[Indorsed]: Original. No. 1633. In the United States Circuit Court of Appeals for the Ninth Circuit. John Gill, for whom has been substituted Maurice McMicken, Administrator with the will annexed of John Gill, deceased, Plaintiff in Error, vs. Frank Waterhouse, Defendant in Error. Citation on Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Divi-

sion. Dec. 14, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. Hughes, McMicken, Dovell & Ramsey, Attorneys for Plaintiff in Error, 661-670 Colman Building, Seattle, Wash. [171]

[Title of Court and Cause.]

Writ of Error.

United States of America,
Ninth Judicial District,—ss.

The President of the United States to the Honorable
Judges of the District Court of the United
States for the Western District of Washington,
Northern Division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said District Court before you, or some of you, between John Gill, for whom has been substituted Maurice McMicken, Administrator with the will annexed of John Gill, deceased, plaintiff, and Frank Waterhouse, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, [172] if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, at the courtrooms of said court in the city of San Francisco, in the State of

California, together with this writ, so that you have the same at the said place, in said circuit, on the 10th day of January next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, this 14th day of December, A. D. 1916, and in the one hundred and forty-first year of the Independence of the United States of America.

FRANK L. CROSBY,
Clerk of said District Court of the United States for
the Western District of Washington.

The foregoing writ is hereby allowed.

(Sgd.) JEREMIAH NETERER,
United States District Judge for the Western Dis-
trict of Washington.

Received copy of the foregoing writ of error,
lodged with me for defendant in error, this 14 day
of December, 1916.

Clerk of the United States District Court for the
Western District of Washington. [173]

Copy of within writ of error received and due ser-
vice of same acknowledged this 14 day of December,
1916.

Attorneys for Defendant in Error. [174]

[Endorsed]: No. —. (Lodged Copy.) In the United States Circuit Court of Appeals for the Ninth Circuit. John Gill, for whom has been substituted Maurice McMicken, Administrator with the will annexed of John Gill, deceased, Plaintiff in Error, vs. Frank Waterhouse, Defendant in Error. Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Dec. 14, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [175]

[Title of Court and Cause.]

Citation on Writ of Error.

United States of America,
Ninth Judicial District,—ss.

To Frank Waterhouse, Defendant in Error:

You are hereby cited and admonished to be and appear at a term of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, State of California, in said circuit, on the 10th day of January, 1917, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, wherein said John Gill, for whom has been substituted Maurice McMicken, Administrator with the will annexed of John Gill, deceased, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why [176]

speedy justice should not be done to the parties in that behalf.

Dated this 14 day of December, 1916.

(Sgd.) JEREMIAH NETERER,
United States District Judge for the Western District of Washington.

FRANK L. CROSBY,
Clerk of said United States District Court for the Western District of Washington.

Copy of within citation received and due service of same acknowledged this 14 day of December, 1916.

Attorneys for Defendant in Error. [177]

[Endorsed]: No. —. (Lodged Copy.) In the United States Circuit Court of Appeals for the Ninth Circuit. John Gill, for whom has been substituted Maurice McMicken, Administrator with the will annexed of John Gill, deceased, Plaintiff in Error, vs. Frank Waterhouse, Defendant in Error. Citation on Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Dec. 14, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [178]

[Title of Court and Cause.]

Stipulation as to Printing of Record.

For the sake of brevity and to avoid unnecessary expense, IT IS HEREBY STIPULATED that in the printed transcript of record of the above-entitled cause there shall be omitted from all pleadings, orders and proceedings (other than the amended

complaint, answer, reply, order of substitution and judgment of dismissal) the title of the court and the number and title of the cause; and that the copy of the accounts annexed to the assignment (which said assignment, together with the accounts thereto annexed, is attached to the bill of exceptions and marked exhibit "D" thereof) need only be printed, and it shall not be necessary to print any other copy of said accounts.

Dated Seattle, Washington, December 18, 1916.

HUGHES, McMICKEN, DOVELL &
RAMSEY,

Attorneys for Plaintiff.

BOGLE, GRAVES, MERRITT & BOGLE,
PRESTON & THORGRIMSON,

Attorneys for Defendant.

[Indorsed]: Stipulation as to Printing of Record.
Filed in the U. S. District Court, Western Dist. of
Washington, Northern Division. Dec. 21, 1916.
Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy.
[179]

[Title of Court and Cause.]

Stipulation as to Record.

IT IS HEREBY STIPULATED, between the parties hereto, that the clerk of this court, in making up his return to the writ of error herein, shall include therein the following:

Amended Complaint;

Answer;

Reply;

Order of Substitution of Maurice McMicken;
Judgment of Dismissal;
Bill of Exceptions;
Assignment of Errors;
Petition for Order Allowing Writ of Error;
Order Granting Writ of Error and Fixing Amount
of Cost Bond;
Cost Bond;
Writ of Error;
Copy of Writ of Error Lodged with Clerk for De-
fendant in Error;
Original Citation, and acceptance of service thereof;
Copy of Citation lodged with clerk for defendant in
error; [180]
Stipulation as to printing Transcript of Record;
Stipulation as to the Record;
—which comprises all the papers, exhibits, deposi-
tions and other proceedings which are necessary to
the hearing of said cause upon such writ of error in
the United States Circuit Court of Appeals for the
Ninth Circuit, and that no other papers or proceed-
ings than those above mentioned need be included
by the clerk of said court in making up his return
to said writ of error as a part of such record; pro-
vided, however, that either party may supplement
the record by adding thereto any matter of record
not hereinbefore mentioned.

Dated December 18, 1916.

HUGHES, McMICKEN, DOVELL & RAMSEY,
Attorneys for Plaintiff.
BOGLE, GRAVES, MERRITT & BOGLE, and
PRESTON & THORGRIMSON,
Attorneys for Defendant.

We waive the provisions of the Act approved February 13, 1911, and direct that you forward typewritten transcript to the Circuit Court of Appeals for printing as provided under Rule 105 of this court.

HUGHES, McMICKEN, DOVELL & RAMSEY,
Attorneys for Plaintiff.

[Endorsed]: Stipulation as to Record. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Dec. 21, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [181]

[Title of Court and Cause.]

**Certificate of Clerk U. S. District Court to Transcript
of Record.**

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court, for the Western District of Washington, do hereby certify the foregoing 181 typewritten pages, numbered 1 to 181, inclusive, to be a full, true, correct and complete copy of so much of the record, papers, exhibits, depositions and other proceedings in the above and foregoing cause, as are necessary to the hearing of said cause on Writ of

Error therein in the United States Circuit Court of Appeals for the Ninth Circuit, and as is stipulated for by counsel of record herein, as the same remain of record and on file in the office of the clerk of said District Court, and that the same constitute the record on return to said Writ of Error herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the plaintiff in error for making record, certificate or return to the United States Circuit [182] Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

Clerk's fee (Sec. 828 R. S. U. S.), for	
making record, certificate or re-	
turn, 401 folios at 15¢.....	\$60.15
Certificate of Clerk to transcript of	
record, 4 folios at 15¢.....	.60
Seal to said Certificate.....	.20
	<hr/>
Total,	\$60.95

I hereby certify that the above cost for preparing and certifying record amounting to \$60.95, has been paid to me by Messrs. Hughes, McMicken, Dovell & Ramsey, Attorneys for Plaintiff in Error.

I further certify that I hereto attach and herewith transmit the original Writ of Error and original Citation issued in this cause.

IN WITNESS WHEREOF I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 26th day of December, 1916.

[Seal]

FRANK L. CROSBY,
Clerk U. S. District Court. [183]

[Title of Court and Cause.]

Writ of Error.

United States of America,
Ninth Judicial District,—ss.

The President of the United States to the Honorable
Judges of the District Court of the United States
for the Western District of Washington, Northern
Division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said District Court before you, or some of you, between John Gill, for whom has been substituted Maurice McMicken, Administrator with the will annexed of John Gill, deceased, plaintiff, and Frank Waterhouse, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, [184] if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, at the courtrooms of said court in the

city of San Francisco, in the State of California, together with this writ, so that you have the same at the said place, in said circuit, on the 10th day of January next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, this 14th day of December, A. D. 1916, and in the one hundred and forty-first year of the Independence of the United States of America.

FRANK L. CROSBY,

Clerk of Said District Court of the United States for the Western District of Washington.

The foregoing writ is hereby allowed.

JEREMIAH NETERER,

United States District Judge for the Western District of Washington.

Received copy of the foregoing writ of error, lodged with me for defendant in error, this 14 day of December, 1916.

FRANK L. CROSBY,

Clerk.

By Ed. M. Lakin,

Deputy. [185]

Copy of within writ of error received and due service of same acknowledged this 14 day of December, 1916.

PRESTON & THORGRIMSON,
BOGLE, GRAVES, M. & B.,
Attorneys for Defendant in Error. [186]

[Endorsed]: No. —. Original. In the United States Circuit Court of Appeals for the Ninth Circuit. John Gill, for whom has been Substituted Maurice McMicken, Administrator With the Will Annexed of John Gill, Deceased, Plaintiff in Error, vs. Frank Waterhouse, Defendant in Error. Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Dec. 14, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [187]

[Title of Court and Cause.]

Citation on Writ of Error.

United States of America,
Ninth Judicial Circuit,—ss.

To Frank Waterhouse, Defendant in Error:

You are hereby cited and admonished to be and appear at a term of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, State of California, in said circuit, on the 10th day of January, 1917, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, wherein said John Gill, for whom has been substituted

Maurice McMicken, Administrator, with the will annexed of John Gill, deceased, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why [188] speedy justice should not be done to the parties in that behalf.

Dated this 14 day of December, 1916.

JEREMIAH NETERER,
United States District Judge for the Western Dis-
trict of Washington.

FRANK L. CROSBY,
Clerk of Said United States District Court for the
Western District of Washington.

Copy of within citation received and due service
of same acknowledged this 14 day of December, 1916.

PRESTON & THORGRIMSON,
BOGLE, GRAVES, M. & B.,
Attorneys for Defendant in Error. [189]

[Endorsed]: No. ——. Original. In the United States Circuit Court of Appeals for the Ninth Circuit. John Gill, for Whom has been Substituted Maurice McMicken, Administrator with the Will Annexed of John Gill, Deceased, Plaintiff in Error, vs. Frank Waterhouse, Defendant in Error. Citation on Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Dec. 14, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [190]

[Endorsed]: No. 2903. United States Circuit Court of Appeals for the Ninth Circuit. John Gill, for Whom has Been Substituted Maurice McMicken, Administrator With the Will Annexed of John Gill, Deceased, Plaintiff in Error, vs. Frank Waterhouse, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Filed December 29, 1916.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

